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Destroy at end of 1978

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**EQUAL
EMPLOYMENT
OPPORTUNITY
PLAN**

Part B

1977-1978

Part B—Accomplishment Report

Introduction:

This section is concerned with the activities committed to in last year's EEO Plan. It is divided into eight areas:

1. Organization and Resources
2. Discrimination Complaints
3. Recruitment
4. Full Utilization of Skills and Training
5. Upward Mobility
6. Supervisory and Management Commitment
7. Community Outreach
8. Program Evaluation

The actions taken and reasons for activities not accomplished are discussed.

In addition, the Federal Women's Program activities are summarized; the Complaint Processing summary is included; and, the Upward Mobility Program achievements are tabulated.

Part B: Accomplishment Report

I. Organization and resources

Problem 1: Lack of full and complete support by Agency managers and supervisors for the goals and objectives of the EEO program.

Objective	Actions	Responsible Officer	Target Date	Actual Date	Action Taken
An OEEO monitored process to ensure adequate assessment of the "EEO" knowledge and performance of persons being considered for promotions to and within supervisory and management positions.	Develop EEO guidelines for the selection and rating of managers and supervisors.	D/OEO	April 1977	Continuing	Planned activities and response to this action were affected by CSC publication of Draft Guidelines for the Selection and Rating of Managers and Supervisors. Interim guidelines were provided the Directorates by the Director, Equal Employment Opportunity; however, there is little inclination on the part of the Directorates to employ these or other effective guidelines without strong motivation either from Civil Service regulation or directive of the DCI.
	Develop and implement a DCI-approved Human Resource Management-EEO rating procedure for present and potential managers and supervisors.	Directors of Personnel and EEO	August 1977	Continuing	While the target date for this action has not been met, the OEEO is currently preparing a draft document for consideration of the Director of Personnel and ultimately for the approval of the DCI.

Problem 2: Lack of uniform standards against which to assess and compare the allocation of Directorate resources to EEO objectives and programs.

Objective	Actions	Responsible Officer	Target Date	Actual Date	Action Taken
Insure that resource allocations are adequate for the performance of EEO program objectives.	Develop program costing model.	OEEO, Comptroller, ODP	August 1977		This action was not taken due to lack of personnel resources. It is not considered significant for the FY 78 Plan.

I. Organization and resources (Cont.)

Problem 3: In designated Directorates, timely training should be provided to persons designed to replace those leaving various part-time EEO responsibilities.

Objective	Actions	Responsible Officer	Target Date	Actual Date	Action Taken
Maintain adequately trained EEO personnel.	Survey all EEO-related working group participants to determine training requirements in DDS&T and provide same.	Component EEO Officers	June 1977	Continuing	Training requirements have been identified and personnel are currently enrolled in or have completed the appropriate courses.
Provide EEO training for all EEO program officials and Agency managers.	Enroll 150 DDA careerists in EEO seminar.	DDA/CMO	September 1977	Continuing	As of 30 June, 80 DDA Careerists had attended the EEO Seminar. In June the Seminar was redesigned (now the Management for Equality of Opportunity). Attendance restricted to active supervisors and a quota system allow only 5 DDA supervisors per class. Unless special runnings are made for DDA supervisors, our goal of 150 cannot be met.
	Enroll one DDI EEO Officer in CSC AAP course.	DDI EEO Officer	1977	April 1977	The Directorate EEO Officer attended 12-15 April running.
	Review internal and external training courses to ensure EEO officers enroll and are made aware of EEO-related training.	DDI EEO	Through 1977	May 1977	The DDI EEO Officer audited the early March running of OTR's EEO Seminar and recommended revisions incorporated into the new Seminar. Announcements re Civil Service Commission training and other EEO training are available through the Directorate EEO Officer; distribution of training announcements is made when applicable.

Problem 4: Need to involve all EEO personnel in performance of Directorate EEO programs.

Objective	Actions	Responsible Officer	Target Date	Actual Date	Action Taken
Increase involvement of those assigned EEO responsibility in the EEO program.	Meet with the three DDI members of the DCI EEO Advisory Panel to discuss the assistance they can give.	DDI EEO Officer	October 1976	Continuing	Informal meetings and/or discussions are held monthly.
	Meet with DDI members of the FWP Board to discuss their work within the Directorate.	DDI EEO Officer	November 1976	Continuing	Informal meetings held monthly; the DDI EEO Officer also attends the meetings and participates in the programs of the DDI Working Group.

I. Organization and resources (Cont.)

Problem 5: Ineffectiveness of some EEO officers in the management of component EEO programs and responsibilities.

Objective	Actions	Responsible Officer	Target Date	Actual Date	Action Taken
Ensure newly assigned DDO officials have the interest, knowledge, skills and ability to perform responsibilities.	Develop selection criteria.	D/EEO, Deputy Directors, and Directorate EEO Officers	FY 77	Continuing	D/EEO is in the process of developing selection criteria for positions throughout the Agency requiring EEO responsibilities. Currently the DDS&T has identified selection criteria for individual vacancy announcements. The DDA has developed qualification criteria for three positions in DDA EEO Staff which can be used in future selections of EEO officials. The DDO has issued guidance to all component chiefs regarding knowledge and abilities needed by EEO officials to perform reporting functions.
Make Agency managers accountable for EEO program results.	Develop procedures for monitoring rewards and educate involved personnel.	DCI, DDCI and D/EEO	FY 77	Continuing	Current reorganizations intended for the OEEO will provide the specialists necessary to effectively monitor managerial actions and procedures. Once in operation, this will facilitate more effective designation of areas where additional education is needed. New training procedures including a new course in the Management of Equal Opportunity will serve to more effectively educate managerial personnel.

II. Discrimination Complaints

Problem 1: There is a misunderstanding by employees, supervisors and managers of the difference between the EEO complaint system and the Agency grievance system.

Objective	Actions	Responsible Officer	Target Date	Actual Date	Action Taken
To educate Agency employees, supervisors and managers about the difference between the Agency's two independent grievance mechanisms.	Continue to have the Director, EEO and his staff serve as lecturers in the "EEO" sections of the Agency's various training courses to explain the discrimination complaint system and other EEO policies, objectives and programs.	OEE0	FY 77	Continuing	More than 20 formal briefings on the discrimination process alone were given (thru 30 July 1977) by D/EEO and staff.
	Continue to publicize EEO policies, programs and the discrimination complaint system through brochures, exhibits and displays on various Agency bulletin boards.	OEE0	FY 77	Continuing	We have revised the 1976 Agency complaint system pamphlet and distributed over 3,000 copies in FY 77. The complaint system and other EEO programs have been featured in 5 different displays on the Headquarters EEO bulletin board and several other bulletin boards.

Problem 2: The CSC guidelines on the administration of the complaint system are not geared to the unique problems of the Agency and are in part too vague to provide the guidance and procedures required by the Agency to administer the complaint system.

Objective	Actions	Responsible Officer	Target Date	Actual Date	Action Taken
To formalize Agency procedures for administering the complaint system ensuring that they address the unique problems of the Agency.	Provide new Agency regulations, coordinated with CSC, to assure the effective, fair and legal operation of the EEO complaint system in CIA.	Deputy Director, EEO	FY 77	Continuing	A revised Hqs. Notice on the Complaint System was issued on 17 May 1977. A draft notice on class action complaints is almost complete. It must still be coordinated with CSC. EEO regulations will be re-written, based largely on the two notices within the next four months.

III. Recruitment

Problem 1: In spite of efforts of managers in the Directorates and recruiters in the Office of Personnel, qualified minorities are not coming on duty at the desired rate. We must continue to look for new approaches and sources to recruit minorities—particularly blacks and Hispanics.

Objective	Actions	Responsible Officer	Target Date	Actual Date	Action Taken
Increase the number of minority applicants possessing skills pertinent to technical and professional positions.	Review requirements placed on recruiters to ensure positions are properly described and in sufficient detail to ensure successful recruitment.	DDI Personnel Officer DDS&T Personnel Officer DDA Personnel Officer	January 1977	Continuing	All recruitment guides and vacancy lists have been reviewed and updated as appropriate. The DDS&T maintains a monthly tally of all DDS&T vacancies to prevent missing a placement opportunity. In addition two offices in the DDS&T have eliminated reliance on higher education.
	Continue study of mechanism by which specific job qualifications and employee/applicant capabilities can be identified. Coordinate findings with the Office of Personnel.	DDS&T CMO, Office of Personnel, the Office of Training, and DDO components.	Unknown	Unknown	Work continues on a digital coding system which would quantify job related experience and proficiency. The Directorate hopes to combine this mechanism with an automated developmental profile for all major occupational codes. Methods of assessing aptitude potential in certain disciplines are under investigation at this time which could be incorporated into this system.
	Direct that line officers attempt to recruit minority candidates through their participation at selected academic and professional meetings.	DDI Office Directors	Throughout FY 1977		DDI recruitment teams began visiting campuses in October 1976. DDI Officers also attended the annual meeting of the National Consortium for Black Professional Development in Atlanta, Georgia in an attempt to recruit minorities. Other DDI activities include: OGCR geographers attended the meeting of the Mid-Atlantic Geographers Association, an OCR employee discussed the intelligence process as part of a careers program at Ft. Hunt High School; an OSI Division Chief responded to a recruiter's request and traveled to the Southwest to talk to several department chairmen and students about Agency employment possibilities; and OER economists attended the meeting of the American economics Association. In addition, representatives from the Offices of Data Processing and Finance accompanied the Associate Coordinator for Cooperative Programs to Grambling State and Xavier University in an effort to recruit minorities in the Co-op program.

III. Recruitment (Cont.)

Problem 1: In spite of efforts of managers in Directorates and recruiters in the Office of Personnel, qualified minorities not coming on duty at the desired rate. We must continue to look for new approaches to recruit minorities—particularly blacks and Hispanics.

(Continued)

Objective:	Actions	Responsible Officer	Target Date	Actual Date	Action Taken
	Use components having domestic offices to assist in the search process.	Concerned components in coordination with OP and appropriate Directorate EEO officers	Continuing	Continuing	Domestic offices have been instructed to assist in the search for minority applicants. OP/Recruitment Division has received assistance from field offices in referring Hispanics and other minorities, and applicant resumes have been forwarded for appropriate action.
	Investigate process utilized by Agency in applicant file distribution and determine if additional information from Directorate is required to clarify its needs.	DDI EEO Officer	1 January 1977	FY 77	The Directorate has pioneered a regular system of identifying actual job vacancies which is provided to each of the offices and staffs involved in minority file processing. As a result, pre-screening has improved significantly. Applicant file routing procedures within the Directorate have been finalized and tested successfully.
	Full and priority attention to minority applicant files by DDO components.	Component chiefs and personnel officers, DDO/EEO, CMS/RTB, do a final personal review before rejection by the DDO.	Continuing	Continuing	Coordinator for Minority Employment of Professionals was appointed and is responsible for keeping OP informed of requirements and job openings as well as expediting consideration of qualified minority candidates for employment or rotational assignments in the DDO. The Coordinator has travelled to interview minority candidates and arranged for other DDO officers to help in conducting interviews. All files on minority applicants are reviewed prior to final rejection by the DDO/EEO, C/CMS and the DDO.
Concentrate efforts on hiring mid-level minority employees.	Designate specific officers to accompany professional recruiting officers on recruiting trips.	DDS&T Office Directors	Throughout FY 77	June 1977	Action completed. Each DDS&T office has identified representatives for recruitment purposes including indirect long-range activities in support of community outreach programs.
				Continuing	DDS&T & DDI office representatives are regularly accompanying OP recruiters on field trips at this time. Since October 1976, DDI representatives visited 16 campuses in attempts to recruit minorities.

III. Recruitment (Cont.)

Problem 1: In spite of efforts of managers in Directorates and recruiters in the Office of Personnel, qualified minorities not coming on duty at the desired rate. We must continue to look for new approaches to recruit minorities—particularly blacks and Hispanics.
(Continued)

Objective	Actions	Responsible Officer	Target Date	Actual Date	Action Taken								
Accurately describe position qualification requirements in terms of actual capabilities and background required rather than relying only on upper level academic degrees.	Accomplish review of office position qualification requirements to determine clarity and realism and alter Recruitment Guides and Vacancy notices as appropriate.	DDS & T Personnel Officers	1 January 1977	1 June 1977	Each of the DDS&T offices have initiated a review of their Recruitment Guides with an eye toward clarifying job requirements as well as updating their overall manpower needs. Most of the Directorate components have completed this effort. The digital coding system described in Problem III-1 above once implemented would support this action.								
Increase minority representation in the DDA.	Hire the following minority mix:	DDA Office Heads	30 September 1977	Continuing	The Deputy Director set the following goals for the DDA during FY 77:								
	<table><tr><td></td><td>Professional</td><td>Technical</td></tr><tr><td>Black</td><td rowspan="4"><div></div></td><td></td></tr><tr><td>Hisp</td></tr><tr><td>Asian</td></tr><tr><td>Women</td></tr></table>		Professional	Technical	Black	<div></div>		Hisp	Asian	Women			Black <div></div> Hispa <div></div>
	Professional	Technical											
Black	<div></div>												
Hisp													
Asian													
Women													
					Through 30 June 1977 the following minorities have EOD'd in DDA in either professional or technical capacities:								
					Blacks <div></div> Hispan <div></div>								
					Several are currently in employment processing.								

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III. Recruitment (Cont.)

Problem 2: The Agency has accurate statistics on its work force composition but not on its sex and race groupings for the various occupation series. There is a need to compare the Agency with the Federal work force and labor market to determine realistic recruitment goals.

Objective	Actions	Responsible Officer	Target Date	Actual Date	Action Taken												
Determine how the number of women and minority employees in the Agency compare with other Federal agencies and with the U.S. labor force.	Review the sex and racial balance of the different occupations within the Agency as they affect recruitment, internal placement or career development.	OEE0	FY 77	Continuing	Statistical data has been compiled on various occupations by race and sex within the Agency (as shown in exhibit 8). An analysis of this data will be completed in October 1977.												
	Obtain an accurate measure of the distribution by job category of race and sex groupings outside the Agency to enable comparative studies.	OEE0	1 March 1977	Continuing	Action continues. A comparative study is scheduled for completion in October 1977.												
	Determine composition of existing work force in industry and Federal Government by job category to enable accurate evaluation of specific soft spots in DDS&T.	D D S & T CMO	1 January 1977	Continuing	A DDS&T population model was combined with the statistics on the breakdown by race and sex in the U.S. Federal work force compiled by the Civil Service Commission. Using this technique it was possible to examine the make-up of each occupational code grouping in Federal Government. Based on the DDS&T model the following statistics on professional employees were derived: <div><div>USG</div><div>DDS&T</div><table><tr><td>Black</td><td>3.9%</td><td>5.0%</td></tr><tr><td>Hispanic</td><td>1.1%</td><td>1.2%</td></tr><tr><td>Oriental</td><td>1.6%</td><td>1.0%</td></tr><tr><td>Women</td><td>7.8%</td><td>14.2%</td></tr></table></div>	Black	3.9%	5.0%	Hispanic	1.1%	1.2%	Oriental	1.6%	1.0%	Women	7.8%	14.2%
	Black	3.9%	5.0%														
Hispanic	1.1%	1.2%															
Oriental	1.6%	1.0%															
Women	7.8%	14.2%															
Determine composition of DDS&T work force by specific discipline to provide data base for accomplishment of Action above.	D D S & T CMO	1 October 1976	Continuing	On 5 January 1977 evaluation of all DDS&T professional positions was completed. Information was drawn from the Personnel and Position Tabulation Run dated 31 December 1976 and occupational codes used by the Civil Service Commission in their November 1975 All Agency Summary. One-third of the professional positions in the DDS&T fell into the Engineering and Science series while a quarter were identified with the Intelligence Occ. Code. The evaluation took each single DDS&T professional position into account.													

IV. Full Utilization of Skills and Training

The Agency EEO office has noticed that some of the following problems and objectives submitted by a single Directorate should have been recognized as needs in other Directorates. The EEO office will discuss these with Directorate EEO officers and encourage action where needed.

Problem 1: Many DDS&T employees are not fully aware of the role each employee plays in putting the latest training and qualifications information into personnel folders.

Objective	Actions	Responsible Officer	Target Date	Actual Date	Action Taken
Increase employee involvement with individual folder update process.	Institute and enforce procedures to insure that each employee has full understanding of status of his/her file and method of entering or changing information so contained.	DDS & T CMO, Office Personnel Officers	1 January 1977		The offices of the DDS&T have taken steps to allow for the annual updating of all employee files. In all but one office this process is dependent on the individual reviewing the file in person. The Directorate has supplemented this local effort with articles on this subject in the Employee Newsletter and briefing presentations.

Problem 2: No systematic effort has been made to survey current skills and training of DDA workforce toward filling internal job requirements.

Objective	Actions	Responsible Officer	Target Date	Actual Date	Action Taken
Provide greater utilization of existing skills possessed by our current employees.	Devise system for matching skills of employees with existing needs.	DDA/EEO	31 December 1976	April 1977	The DDA developed a Directorate-wide FUST program. Existing data bases were examined to determine what information is already available and what additional information is required.
	Consult Office of Personnel's Qualifications Analysis Branch re: inventory of current resources.	DDA/CMO	30 September 1977	April 1977	It was determined that OP's system does not contain skills information in such a format as to be feasibly retrievable.
		DDA/EEO		April 1977	In addition, the DDA/EEO Staff devised a form to survey skills in the DDA. This initial survey is limited to GS-12s' and below, including wage grade equivalents. Estimated completion date is July 1978.
		OP/SPD DDA/CMO Careers Committee	31 December 1976	December 1976	A system was devised whereby existing needs are matched with Employees Available for Reassignment (EAR). Implementation has taken place in DDS&T. DDA implemented this on 1 March 1977.

IV. Full Utilization of Skills and Training (Cont.)

Problem 3: A recent DDS&T survey has indicated a general underutilization of existing career counseling services in the Directorate.

Objective	Actions	Responsible Officer	Target Date	Actual Date	Action Taken
Increase use of DDS&T Career Counseling services.	Advertise and encourage career counseling on the working level to include providing supervisors with sufficient related information with which to work.	DDS & T CMO	1 July 1977	1 July 1977	An expanded publicity program has been in effect during the quarter to acquaint the DDS&T employees with their career counselors. First-line supervisors are being identified as the best initial point of contact for employee inquiries.

Problem 4: In the DDO there is a significant average grade differential between women and minority groups and the general work.

Objective	Actions	Responsible Officer	Target Date	Actual Date	Action Taken
Ensure that the members of each Personnel Evaluation Board are aware of the principles of EEO and their application, within the merit system, in the work of the Board.	Discuss with each Board EEO factors, principles and policies that the Board should consider in the ranking process and in formulating training and assignment recommendations for individuals.	DDO EEO Officer and the Vice-Chairman of each Board	Per annual schedule of DDO Personnel Evaluation Boards (See chart in recruitment section.)	18 October 1976 Action Continuing.	Briefed members of Personnel Evaluation Boards which convened during the first three quarters.
	Appoint women and minority group members to service on Evaluation Boards to the extent that availability permits.	C/CMG and Chairman and Vice-Chairman, DDO Personnel Evaluation Boards	Per annual schedule of DDO Personnel Evaluation Boards	August-October 1976 Action Continuing.	Memorandum, dated 3 August 1976 was sent to component chiefs and specifically requested women and minorities group members to be among the nominees.

V. Upward Mobility

Problem 1: Many managers do not have an accurate understanding of "Upward Mobility."

Objective	Actions	Responsible Officer	Target Date	Actual Date	Action Taken
Increase manager's understanding of the CSC definition and guidelines for Upward Mobility.	Give briefings to at least 10 different management groups.	Agency Upward Mobility Coordinator	December 1977	Continuing	To date, ten briefings have been given to management groups throughout the Agency. Two additional groups will be briefed by the end of the year.
	Put information on bulletin boards and in employee bulletin.	Agency Upward Mobility Coordinator	July 1977	Continuing	Information regarding upward mobility programs has been published in Newsbriefs which is an EEO monthly publication.
	Write Agency Upward Mobility handbooks for employees and program designers.	Agency Upward Mobility Coordinator	July 1977	Continuing	An outline of the handbook has been completed and initial drafting of the text has been started; however, we do not anticipate completion before July 1978.

Problem 2: The Agency does not offer an Upward Mobility Program to all employees below G-09.

Objective	Actions	Responsible Officer	Target Date	Actual Date	Action Taken
Encourage improvement and expansion of existing programs and creation of new programs.	Publish details of successful Upward Mobility efforts as models.	Agency Upward Mobility Coordinator	December 1976	Continuing	The EEO publication Newsbriefs has contained information on three Upward Mobility programs in the Agency. Action will continue as more information becomes available.
	Assist responsible officials in Directorates and components in their program planning.	Agency Upward Mobility Coordinator	December 1977	Continuing	Four formal sessions have been held with program planners as well as informal contact with responsible officials to supply information and assistance.
	Distribute Upward Mobility handbooks to Directorate and components	Agency Upward Mobility Coordinator	October 1977	Continuing	Completion of the handbook has been delayed. Distribution will be made before the end of 1978.

V. Upward Mobility (Cont.)

Problem 3. With the initial running of the DDI Advancement Opportunities Program nearly finished, a new program will be initiated with a focus upon placing more of the significant number of non-selected candidates who were qualified for new career fields. The positions identified for this program will be incorporated into an Agency-wide program if such a program is adopted.

Objective	Actions	Responsible Officer	Target Date	Actual Date	Action Taken
To initiate a second Advancement Opportunities Program.	Review and revise present program.	Ad Hoc Committee of representatives from each DDI office and staff.	January 1977	October 1976	Completed
	Review positions to select those to be advertised as Upward Mobility jobs.	Executive Officer	January 1977	November 1976	Completed
	Issue AOP vacancy notice.	DDI	February 1977	December 1976	Completed
To initiate a second Advancement Opportunities Program.	Select candidates for placement in 5 to 10 AOP positions.	DDI Career Board	May 1977	May 1977	Seven candidates were selected for 7 positions; training program began 1 May 1977.
To place clerical level applicants in professional or technical positions offering career advancement.	Review AOP applicants who are not selected and attempt to place them in Directorate vacancies.	DDI Pers Officer	September 1977	July/August 1977	A list of nonselected AOP applicants plus their qualifications has been formulated and sent to each office director and personnel officer. Results have not been determined yet.

Problem 4: Some DDS&T employees do not have the opportunity to apply for selection in a formal Upward Mobility Program. While the Directorate has several productive Upward Mobility activities, they are limited to disciplines within organizational components, not open to the whole Directorate. A program of wider scope is needed to include all DDS&T employees.

Objective	Actions	Responsible Officer	Target Date	Actual Date	Action Taken
Provide more Upward Mobility opportunity in DDS&T.	Complete the identification of internal office Upward Mobility positions.	DDS&T EEO Officers	July 1977	June 1977	Action completed. Each office has identified their Upward Mobility positions. Most of these will be included in the forthcoming Directorate-wide program.
	Formulate and implement a Directorate-wide Upward Mobility Program.	DDS & T CMO	1 October 1977	Not completed	This action will be included in the FY 78 actions.

V. Upward Mobility (Cont.)

Problem 5: There has been inadequate advertising of existing DDA Upward Mobility efforts.

Objective	Actions	Responsible Officer	Target Date	Actual Date	Action Taken
Ensure that DDA Upward Mobility efforts are publicized.	As plans become operational advertise their existence and successes on bulletin boards and through notices.	Office Heads and DDA EEO Officer	31 December 1976 30 September 1977	December 1976	The DDA Upward Mobility Project AIM was announced in December 1976. A copy was provided to each DDA careerist.

The Offices of Personnel, Logistics and Training have publicized their upward mobility programs via notices to employees. In addition, on 28 March 1977 a DDA Administrative Notice was published announcing the eight positions to be filled through Project AIM.

Problem 6: No formal Directorate Upward Mobility Program or centrally coordinated Upward Mobility effort exists in the DDA.

Objective	Actions	Responsible Officer	Target Date	Actual Date	Action Taken
To provide a coordinated Upward Mobility effort in the Directorate.	Establish Upward Mobility Program in each Office.	Office Heads and DDA EEO Officer	31 December 1976	December 1976	A centralized Directorate Upward Mobility Program (Project AIM) was established and announced on 22 December 1976. Project AIM will offer a maximum of 8 target positions per year for GS-8's and below. In addition, the Offices of Personnel, Logistics and Training have formulated Upward Mobility programs which follow CSC guidelines.

V. Upward Mobility (Cont.)

Problem 7: DDA Career Counselors do not necessarily receive specialized training in Upward Mobility Courses.

Objective	Actions	Responsible Officer	Target Date	Actual Date	Action Taken
Provide career counselors with specialized Upward Mobility training.	Enroll 33 1/3% of currently designated Career Counselors in specialized Upward Mobility training courses.	Office Heads in DDA	30 September 1977		The Directorate's new EEO Office is responsible for the Upward Mobility Program. Career counselors do not have this responsibility and therefore were not enrolled in any special courses.

Problem 8: DDO Career Counselors and Branch Chiefs do not receive specialized training to help them with their Upward Mobility Counseling responsibilities.

Objective	Actions	Responsible Officer	Target Date	Actual Date	Action Taken
Provide DDO Career Counselors and Branch Chiefs with training which introduces Civil Service Upward Mobility guidelines and CIA programs.	Develop an inhouse Upward Mobility course.	Agency Upward Mobility Coordinator	July 1977	March 1977	Course has been developed and was presented to two DDO management groups.
	Enroll DDO Career Counselors and selected Branch Chiefs in a specialized Upward Mobility training course.	DDO Component Heads	December 1977	June 1977	Specialized Upward Mobility training course held in June by UpMo Program Coordinator for 12 DDO Career Counselors.

VI. Supervisory and Management Commitment

Problem 1: The first line supervisors in the Directorates are in need of concentrated practical instruction on their relationships and requirements in EEO. The related instruction provided as a part of other management courses tends to be insufficient.

Objective	Actions	Responsible Officer	Target Date	Actual Date	Action Taken
Ensure DDS&T Supervisors and managers are given relevant EEO training which identifies the requirements and relationships needed to perform EEO responsibilities.	Arrange for tailored EEO training for DDS&T supervisory and management personnel.	DDS&T training officer	1 January 1977	Continuing	The Management for Equality of Opportunity Course will be used as a baseline for formulating a brief course designed for DDS&T supervisors.
Ensure that DDO supervisors are aware of their EEO responsibilities.	Enroll Supervisors/managers in the OTR EEO Seminar.	Component TRO's, DDO/TRO, component EEO Officer and DDO/EEO Officer	Continuing per OTR schedule of course	Per OTR schedule of seminar, action continuing	DDO oversubscribed its quota in all EEO Seminars conducted by OTR. Special runnings of the course will be held for DDO supervisors/managers in the future.
	Notify component EEO Officers of newly-assigned supervisors.	Component Personnel Officers	Continuing	Continuing	Performance was spotty and represents area for increased effort.
	Brief newly-assigned supervisors on EEO.	Component EEO Officers	Continuing	Continuing	Incomplete. Added emphasis is required.
Continue efforts toward increased awareness of EEO by first line supervisors.	Enroll an additional 150 DDA employees in Fundamentals of Supervision and Management and 125 in the EEO Seminar.	Office CMO's	30 September 1977	25 August 1977	96 DDA employees attended the Fundamentals of Supervision and Management course.
				30 June 1977	80 DDA employees attended the EEO Seminar.

Problem 2: Lack of established incentive awards program for the recognition of supervisors and managers for their understanding and support of EEO.

Objective	Actions	Responsible Officer	Target Date	Actual Date	Action Taken
Recognize deserving Directorate employees excelling in the EEO field regardless of their designated association. At the same time sharpen the evaluation of all EEO officials to insure that each is carrying out his/her duties effectively.	Formulate and distribute policy and procedures on the recognition of employees in the DDS&T whose performance in the EEO area deserves recognition and initiate regular and continuing reviews of candidates.	DDS&T EEO Officer	1 January 1977	March 1977	Guidance has been promulgated to the offices. Further formal policy dissemination awaits the upcoming Agency-wide notice on performance and awards in the EEO field. Each office has been tasked to review all existing award candidates and to initiate appropriate recognition actions.

VI. Supervisory and Management Commitment (Cont.)

Problem 2: Lack of established incentive awards program for the recognition of supervisors and managers for their understanding and support of EEO.

Objective	Actions	Responsible Officer	Target Date	Actual Date	Action Taken
To establish performance criteria in FY 1977.	To attempt to formalize an approach to performance criteria as it relates to EEO.	D/EEO and DDA EEO	30 January 1977	March 1977	See Part B, I. <i>Organization and Resources</i> . While no formal approach has yet been developed, approval was received to grant a DDA employee a special recognition award for his efforts and accomplishments in EEO.
	Implement a regular and continuing practice of evaluating all supervisory personnel having a direct role in EEO activities on their understanding and support of same.	DDS&T EEO Officer, and Office Directors	1 January 1977	1 January 1977	Guidance on the evaluation of supervisors on EEO performance and sensitivity is presently contained in the DDS&T Employee Handbook which has been distributed to each employee in the Directorate. The DDS&T offices report an increase in the frequency of comments appearing in Fitness Reports on EEO performance. This action will also be addressed in our upcoming EEO instruction.

Note: While the problems identified above and the objectives and actions committed to their solution vary in scope and intensity from Directorate to Directorate, the Office of EEO views the problem of supervisory and management commitment as applying to each Directorate equally and will endeavor to influence uniform action throughout the Directorates.

VII. Community Outreach

Problem: The Agency has not articulated a community outreach policy.

Objective	Actions	Responsible Officer	Target Date	Actual Date	Action Taken
Involve the Agency more in community life and objectives.	Develop a Community Relations Program Plan.	Community Relations Coordinator, OEEO, Special Assistant to DCI	1 March 1977	Continuing	Action continues. To date, no formal program has been established. However, there has been Agency participation in certain community activities, e.g., Agency employees have participated on three occasions this year at conventions. A new Agency exhibit and audio/visual display on the intelligence process has been used at these functions. Additional activities including an Agency-wide tutorial program are in the planning stages.
	Determine the feasibility, from a personnel and security standpoint, of actively participating in community educational and career activities.	OEEO and DDS&T EEO Officer	1 January 1977	February 1977	A Headquarters Notice was issued in February 1977 which announced Agency policy and guidance regarding community activities. DDS&T activities include presentations in several college and high school career information programs. Assistance has also been given to local schools (Ballou High School tutoring program). The Directorate is now planning a flexible program for application in various community affairs which will include each office in the DDS&T.

VIII. Program Evaluation

Problem: Lack of a systematized program evaluation procedure.

Objective	Actions	Responsible Officer	Target Date	Actual Date	Action Taken
To develop and place into operation a specific, regular means of program evaluation to provide data for the Director, EEO and the Director of Central Intelligence.	Provide a specific procedure and calendar to facilitate the provision of program data to the Director, EEO.	Director EEO	1 January 1977	Continuing	A process for providing regular program materials and evaluation to the Director, EEO is currently being established. However, the establishment of regular reports for the Director of Central Intelligence is delayed pending development of a reporting schedule for the Director and Deputy Director of Central Intelligence.
	To establish procedures under each program for the provision of directorate program data to program coordinators.	Program Coordinators	1 January 1977	Continuing	This action is also delayed pending development of a reporting schedule.
	To provide specific procedures by which the EEO Advisory Panel, Federal Women's Program Board, Management Advisory Groups, EEO Officers and others may ensure their contribution to program evaluation.	Program Coordinators	1 January 1977	Continuing	Action also delayed pending development of a reporting schedule.
	To provide in the schedule of activities for EEO plan monitoring and evaluation a specific calendar and format in accordance with which program coordinators may provide the results of their evaluations.	Program Coordinators	1 January 1977	Continuing	Action also delayed pending development of a reporting schedule.

IX. Federal Women's Program

Last year's EEO plan listed the planned activities of the Federal Women's Program Board. The accomplishments of the Board for this period include:

1. coordinating the establishment of Directorate Women's Working Groups
2. advising the Federal Women's Program Coordinator
3. providing themes on the problems of women employees to the DDCI
4. assisting in the interviewing and selection of the Federal Women's Program Coordinator
5. creating an exhibit "Women in CIA"
6. developing a library shelf dedicated to topics of interest for women
7. preparing a short history of the Board for all Agency personnel.

The Directorate Women's Working Groups developed activities tailored to the unique demands of their officers. They include:

1. evaluating and recommending modifications to the DDI Upward Mobility Program
2. holding programs on EEO, Career Development, assertiveness
3. preparing statistics on the status of women in the various Directorates
4. proposing a Clerical Evaluation Program to the DDS&T Career Service Board
5. establishing ties with the DDO Secretarial/Clerical Advisory Group
6. Submitting problem areas concerning Agency women which should be addressed in the EEO Plan.

The Board will be developing its objectives for FY78 at a two-day session. The tentative areas to be explored include the following:

1. increase the number of female line managers
2. increase female representation on career panels
3. study the career system for clericals and secretaries
4. strengthen the Directorate Women's Working Groups
5. launch several long-range studies of issues relevant to Agency females.

The priorities of the Federal Women's Program Coordinator are to investigate the concerns of women in the Agency, to do something about these concerns, and to improve communication between women and management and between women and other women. In order to accomplish these goals, the Coordinator will be meeting with management to discuss the problems of women and work with managers to resolve these problems. In addition, the Coordinator will be attempting to improve the status of women by counseling, encouraging training, developing communications networks, promoting the "professionalism" of secretaries, and aiding in the development of women for future leadership roles in the Agency.

EEO Complaint Processing Summary

Number of Complaints	Type of Complaint	
	Individual	Class
On hand at beginning of the year	8	0
Received during the year	17	0
Closed during the year	12	0
On hand at the end of the year	13	0

Upward Mobility Program Achievement

- A. Number of employees at and below GS-09 or equivalent who participated in at least one planned upward mobility program activity and who were competitively promoted or reassigned into target positions.

(1) within the same occupational series:

DDA —0
DDI —0
DDO —0
DDS&T—0

(2) into a different occupational series:

DDA —
DDI —
DDO —
DDS&T—

- B. Number of employees at and below GS-09 and equivalent who participated in one or more upward mobility program activities but who were neither promoted nor reassigned.

DDA —
DDI —
DDO —
DDS&T—

resigned)

- C. Universe of potential Upward Mobility Opportunities: Total number of position vacancies filled competitively through merit principles below GS-10 and equivalent in all series and from all sources.

DDA —
DDI —
DDO —
DDS&T—

NEWSBRIEFS

MARCH 1978

PUBLISHED
BY THE OFFICE OF EEO
FOR EEO OFFICERS AND
OTHERS WITH EEO PROGRAM
RESPONSIBILITIES

UPWARD MOBILITY

STAT

Upward Mobility Coordinator

STAT

New Course

The Civil Service Commission has announced a new course, Career Women and Upward Mobility. The Course is designed to support agency Federal Women's Programs and Upward Mobility Programs by providing assistance to those employees at the lower grade levels who are or who will be participating in Upward Mobility programs. Priority will be given to GS-5 and below and equivalent employees. If you would like more information about the course, please call

STAT

UpMo Courses Scheduled

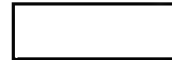
The CSC has also announced two runnings of UPWARD MOBILITY PLANNING AND IMPLEMENTATION, May 8-11 and August 14-17. This course is for Agency Upward Mobility coordinators and teams. It covers all facets of Upward Mobility and provides an opportunity to examine options and techniques and to exchange ideas.

HISPANIC PROGRAM

STAT

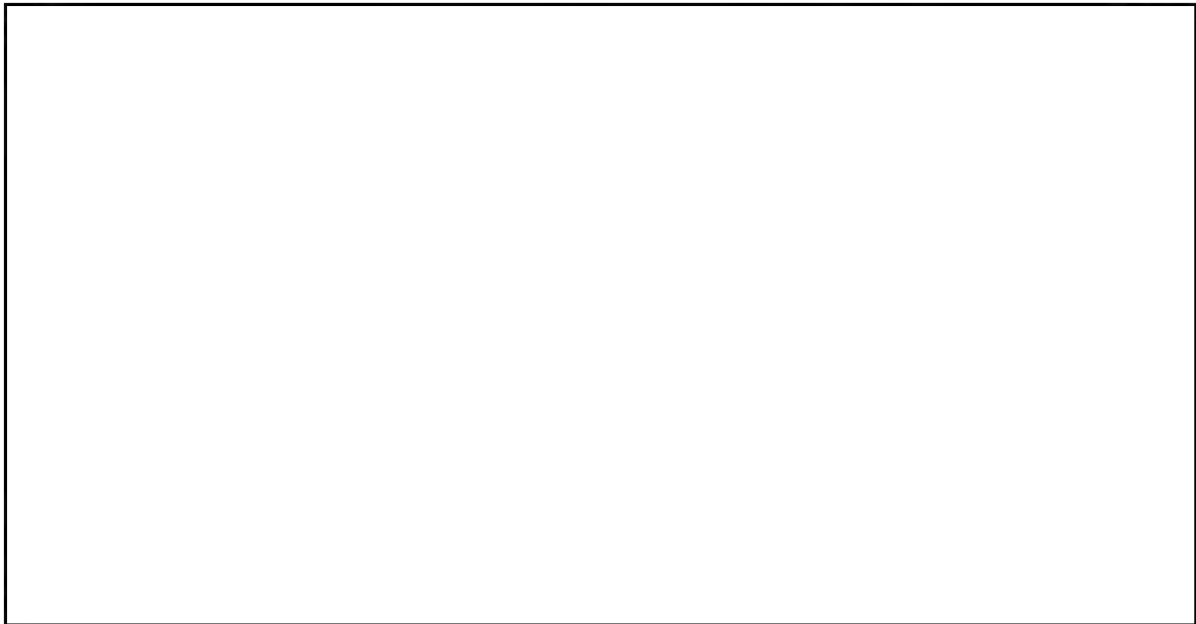


Acting Hispanic Coordinator



STAT

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IMAGE Convention

The Fifth National IMAGE Convention will be held in Washington, D.C., June 6-10, 1978. The theme for this year's convention is UNITY. IMAGE is the largest National Hispanic Organization in the United States whose primary purpose is to advocate equality in public and quasi-public employment for Hispanic Americans. Founded in 1972, IMAGE is recognized today as one of the most viable non-profit organizations serving the Hispanic population of the U.S. It's goal is to counter social ethnic, religious, age, and sex discrimination as it affects the employment of Hispanic Americans. We are planning an exhibit booth at the convention manned by the Office of EEO and Recruitment Division from the Office of Personnel. In March we will be pulling together a list of representatives to participate in the convention itself. Recommendations of participants should be forwarded to the Office of EEO through the Directorate EEO Officer. We would like to have one participant from each directorate.

BLACK AND OTHER MINORITIES PROGRAM

STAT

 Coordinator

STAT

National Consortium for Black Professional Development
(NCBPD) Conference

The fourth annual Spring NCBPD Conference scheduled for Cleveland, Ohio, 17-19 May 1978, will be attended by Agency representatives from the OEE0, NPIC, NFAC and the Office of Personnel. The Conference is aimed at promoting science and engineering competition among black students to prepare them for careers in technical fields. Agency representatives who attended last year's NCBPD Conference were very impressed with the students' talent and potential. The Agency views the Consortium Conference as a unique opportunity to make black students aware of the importance of majoring in engineering or other academic disciplines in college that may lead to a career in intelligence.

Black History Month

Thank you for your support of Black History Month activities. Agency plans for a program were cancelled due to more important commitments of the guest speaker, Ambassador Andrew Young. We feel, however, that the spirit and purpose of the Black History observance during the month of February was very well captured by the exhibit "Blacks in the Westward Movement" that was on display in Headquarters exhibit hall.

Minority Women

There are many misconceptions and stereotypes about the special cultural and educational barriers facing minority women who enter the labor force. The article "Enlarging the American Dream" from American Education, May 1977, Vol. 13, No. 4. addresses this topic and suggests some strategies for meeting the particular needs of five groups of minority women: Blacks, Asian Americans, American Indians, Puerto Ricans, and Chicanos. The following is taken from the article:

"Asian-American Women

Asian-Americans ... are a highly diversified ethnic group[which] includes Koreans, Indians, Pakistani, Veitnamese, Indonesians, Thais, Malaysians, and a wide representation of Pacific peoples...

"Levels of unemployment of Japanese-American and Chinese-American women are generally low, even slightly lower than those for whites. In 1970, for example, the unemployment rate was only 3.7 percent for Chinese women. The problem is not in getting a job, but rather in the kind of job and the salary it pays. Many recent Chinese immigrants, fresh off the plane, can walk into one of the small garment factories scattered throughout any Chinatown or its peripheral area and start working the next day. They work by the piece and their hours are fairly flexible. Piece work at low rates is always available....

"Young Asian-American women, especially those who are third generation, are feeling a void and are expressing a need and desire to rediscover their ethnicity. These women are more liberated and more assertive. They are challenging the monocultural ideal of the majority society to acknowledge, analyze, and incorporate Asian-American women and men at all social, political, educational, and economical levels. Fundamental changes in the American educational process toward a goal of cultural pluralism is a realistic response to their peculiar needs and strengths."

More excerpts from "Enlarging the American Dream" will be included in future Newsbriefs issues. However, we encourage you to read the entire article, and we have extra copies available.

COMMUNITY RELATIONS PROGRAM

STAT

Coordinator

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Fair Housing

In 1968, Congress codified the right to equal housing opportunity with passage of the national Fair Housing Law, Title VIII of the 1968 Civil Rights Act. Each year in April, the Nation celebrates the anniversary of this event. This year's theme of the anniversary observance is "Fair Housing - A Basic Right/Right Now."

The goal of the fair housing laws is to ensure that all citizens have equal rights in obtaining housing. There is a great disparity between the ideal of equality that is stated in the laws and the reality of housing discrimination that exists today. The law guarantees equality and makes discrimination illegal; however, the realities of racially-impacted neighborhoods, ghetto housing and the many cases of individual discrimination in the sale, rental and financing of housing are very much evident.

Fair housing is a right guaranteed by law but it is also a fundamental right for our nation and its people. Fair housing is a right for the nation for several reasons. It is fulfillment of the notion of individual freedom on which this country is based. It is a right because discrimination is a denial of a justice and a measure of dignity and our country treasures justice and the sense of human dignity. And it is a right because this moment in time calls for unity of purpose and the willingness to join in common efforts to meet the crises that confront all Americans. We, as a Federal agency, have the responsibility to promote fair housing in an affirmative manner.

Job Fair -- Law Field

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The National Bar Association in conjunction with the Black American Law Students Association sponsored a Recruitment Job Fair for Legal Minorities on 17-18 February at the Howard University School of Law. This organization is the only bar association dedicated to the placement of legal minorities. The Agency was invited to participate at the Fair, and at the request of OEEO [redacted] OP/Recruitment Division, and Messrs. [redacted] OGC, attended. Although the turnout at the function was disappointing, the Agency representatives were able to meet and talk to 12 interested attorneys, four of whom may be valuable candidates for Agency employment.

Career Awareness Fair

The Agency has been invited to participate at a Career Awareness Fair on 13-15 March at the D.C. Armory sponsored by the Prometheans, Inc. The Prometheans, Inc., is a black male professional organization that has focused their efforts in recent years on helping youth. All D.C. 9th through 12th grade students will attend the Fair in addition to teachers, counselors parents and evening school students. The purpose of the fair is to provide information about various professions and necessary criteria for related jobs. We plan to exhibit at this function and will have a recruiter, OEEO, and directorate personnel available to attend.

FEDERAL WOMEN'S PROGRAM

STAT

Coordinator

STAT

Workshop for Women's Groups

STAT

A workshop is being planned for members of the Women's Board and the Directorate Women's Working Groups on 29 March in Room 1 A 07, Headquarters from 0900-1200. formerly of Wider Opportunities for Women will be the guest speaker and will discuss "The Emerging Role of Women in Government."

Assertive Appearance Presentation

Mstiques Associates will be presenting two seminars on The Assertive Appearance. The presentation discusses how clothing and appearance affect the way a person is perceived in a work situation, especially in the projection of authority. This seminar was presented at the conference of Federally Employed Women last year and resulted in a spirited discussion. The first session will be at NPIC on 8 March from 1000 to 1130 hours. The second will be at the Headquarters Auditorium on 16 May from 1130 to 1300.

FWP Board

At the February meeting, a representative of the Office of Personnel briefed the Board on the Personnel Development Plan and Agency efforts in executive development. The Board discussed this topic with the DCI in November 1977.

Secretarial MAG

STAT The DCI has established a Secretarial MAG to look into areas of concern to secretaries and clericals. [] is the Chairman. The groups first step is to collect the studies which have been done in the past. Anyone knowing of such a study, please contact Debbie on []

STAT

CIA Task Force on Sex Discrimination

The President has charged the Attorney General with reviewing all Federal laws, regulations and policies for sex discrimination. To carry out these responsibilities a special Task Force on Sex Discrimination has been formed in the Civil Rights Division of the Department of Justice.

In meetings with the Justice Department, it has been determined that CIA is not involved with public laws, programs or publications which are directed at the general public. What remains is a review of internal regulations, policies or practices which discriminate by sex or which have a disparate effect on one sex. Justice has asked some specific questions concerning Agency practices in recruiting, training, security, and occupations which may be restricted on the basis of sex.

STAT The Director of Central Intelligence has directed the establishment of a CIA Task Force to conduct this review and it will begin in March. If anyone has knowledge of topics which should be studied, please notify [] Room 5 E 47 Hqs).

Books Added to the Women's Shelf

"Speaking UP" - A Book for Every Woman Who Wants
to Speak Effectively, Janet Stone and Jane
Bachner. McGraw-Hill Book Company,
1221 Avenue of the Americas, New York,
N.Y. 10020.

Speaking Up is not for speechmakers only but is
for every woman who has ever sat silent while someone
else aired her views, ever faltered in conversation,
ever wanted to say anything loud and clear. It
includes field-tested strategies for such palm-
dampening situations as:

- answering hostile questions
- fielding friendly but irrelevant questions
- thinking on your feet
- recovering from mistakes

Timeliness Requirement in Filing Complaints of Discrimination

STAT

Laws and Regulations Coordinator

STAT

There are three basic requirements for the acceptance of an EEO complaint. The first is that there must have been an adverse action against the employee taken voluntarily or knowingly condoned by Agency management; second, such action must be reasonably perceived as having been taken because of the employee's race, sex, color, religion, age (over 40), or national origin; third, the employee must bring the problem to the attention of the Agency EEO Complaint System on a timely basis. The first two requirements are generally understood; the third, which allows the Director of Equal Employment Opportunity discretion in waiving the requirement for what the Director of EEO deems to be sufficient cause, occasions frequent problems.

An agency may accept a complaint for processing in accordance with 5 CFR § 713.214(i) only if:

"(i) the complainant brought to the attention of the Equal Employment Opportunity Counselor the matter causing him to believe he had been discriminated against within 30 calendar days of the date of that matter, or, if a personnel action, within 30 calendar days of its effective date."

The exercise of agency discretion is permitted in §713.214(4) which states:

"(4) The agency shall extend the time limits in this section (i) when the complainant shows that he was not notified of the time limits and was not otherwise aware of them, or that he was prevented by circumstances beyond his control from submitting the matter within the time limits, or (ii) for other reasons considered sufficient by the agency.

However, it is the accepted interpretation of §713.214(i) and (4), that in the absence of an agency's use of its discretionary privilege, the 30 day "timeliness in filing" requirements stands.

See: Spears v. Veteran's Administration,
Civil No. 76-0037-CT, Southern
District of California, September 14, 1976
Wilson v. Marston, Civil No. 76-124-C2
District of Kansas, May 11, 1977

where the court dismissed the cases for failure to contact a counselor within 30 days.

POINTS TO CONSIDER

1. According to OGC at CSC, courts are leaning toward the acceptance of complaints which are untimely filed where complainant claims "continuing discrimination" or that he/she did not know he/she was being discriminated against.
2. Also, a complainant could conceivably bring a discrimination complaint against an agency based on the fact that his/her complaint was rejected while there was a pattern or practice of suspending the "timeliness in filing" requirement.

PEOPLE, EVENTS, COMMENT

STAT

[REDACTED]

Newsbriefs Editor

[REDACTED]

STAT

STAT

[REDACTED]

Becomes Special Assistant to DDCI

STAT

Congratulations [REDACTED] We wish you well but miss you in the Office of EEO. Your work on the Federal Women's Program, statistics packages and reports, the Equal Employment Opportunity Plan and the many ideas you carefully planted and cultivated here have all been appreciated. Thanks, [REDACTED]

STAT

OEE0 and Self-Study Center Building a Collection

A concept important to any manager is addressed in a video tape recently added to the Self-Study center -- Productivity and the Self-Fulfilling Prophecy: The Pygmalion Effect. We plan to add more such materials which show how OEE0 objectives and good management practices support each other. The Self-Study Center is located in G J 68, Headquarters [REDACTED] Drop in anytime to see a video tape.

STAT

The Calendar

February 27 - March 1

MEO (Management for Equality of Opportunity) Course -
OTR
Civil Service Commission EEO Counseling Course

February 28

DDA Project AIM Upward Mobility Program Orientation
in the Headquarters Auditorium at 1:00 p.m.

March 8

The Assertive Appearance Workshop - NPIC Auditorium
1000 - 1130. Sponsored by FWPC. (See article on
page 7)

March 13-15

Career Awareness Fair sponsored by The Prometheans,
Inc., (a black male professional organization who
focus on helping youths). CIA will attend in order
to provide information to D.C. high school students
regarding the various professions in the Agency and
the necessary criteria for jobs in those professions.
(See article, page 4).

March 22

NPIC Guest Speaker Program -- [redacted] FWPC,
Department of the Army at the Pentagon, NPIC Auditorium,
Building 213, 1000-1200. Topic: "Women in Federal
Government."

STAT

March 29

Workshop for Women's Board and Working Groups.
Room 1 A 07, Headquarters: 0900-1200. Sponsored
by FWPC. (See article, page 7).

April

Commemoration of 10th Anniversary of Fair
Housing Law. (See article, page 5).

April 5-7

EEO Investigator's Workshop, an investigator's
refresher course run by the Office of EEO.

April 10-12

MEO Course -- OTR

April 12

NPIC Guest Speaker Program -- [redacted]
Chairman of the Council of the District of
Columbia, NPIC Auditorium, [redacted] 1000-1200.

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April 13
DDS&T Career Development Day

May 8-11
Upward Mobility Planning and Implementation, a
Civil Service Commission course. (See article,
page 4).

May 15-17
MEO Course -- OTR

May 16
The Assertive Appearance Workshop; Headquarters
auditorium; 1130-1300. Sponsored by FWPC.
(See article, page 7).

May 17-19
National Consortium for Black Professional
Development Conference, Cleveland, Ohio.
CIA plans to send representative. (See
article, page 3).

June 6-10
IMAGE Convention, Washington, D. C.

July 2-7
National Association for the Advancement of
Colored People (NAACP) Convention, Portland, Oregon

July 12
Federal Women's Program Training Seminar,
Denver, Colorado. Sponsored by Civil Service
Commission FWP.

July 13-15
Federally Employed Women's Conference, Denver,
Colorado.

July 24-26
MEO Course -- OTR

July 30 - August 5
National Bar Association Convention, Hollywood,
Fla. -- an organization representing over 8000
black lawyers. We will attend for recruiting
purposes.

August

G.I. Forum Convention, Corpus Christi, Texas

August 6-9

National Urban League, Inc., Conference, Los Angeles, Calif.

August 14-17

Upward Mobility Planning and Implementation,
a Civil Service Commission course. (See article,
page 4).

September 18-20

MEO Course -- OTR

United States Civil Service Commission

FPM Letter 713-42

Federal Personnel Manual System

FPM Letter 713-42

Published in advance
of incorporation in FPM
chapter 713

RETAIN UNTIL SUPERSEDED

SUBJECT: Participation in the Discrimination Complaint Process
of Persons Named As "Alleged Discriminating Officials"

Washington, D. C. 20415
March 13, 1978

Heads of Departments and Independent Establishments:

Introduction

1. The purpose of this letter is to set forth general guidance concerning the participation, in the discrimination complaint process outlined in Part 713 of the Commission's regulations, of persons named by complainants as "alleged discriminating officials." This letter supersedes all written and oral instructions which in the past have served as guidance on this matter.
2. The primary focus of previous discussions and guidance related to this matter has been on creating and maintaining a positive environment for the use of the complaint process by aggrieved individuals, and on insulating complainants (and witnesses) from the possibility of reprisal or harassment based on their participation in the complaint process. The participation of supervisors and others who may have been named by complainants as "alleged discriminating officials" has been essentially limited to their serving as witnesses who provide sworn testimony regarding complaints and the situations from which they arise. In practice, agencies have on some occasions so limited this participation that alleged discriminating officials have sometimes been required to furnish testimony without having even been informed that complainants have implicated them personally in allegedly discriminatory acts, or without knowing the exact nature of charges which have been made against them.
3. It is vital, of course, that aggrieved employees and applicants continue to feel free to avail themselves of the full due process afforded by the discrimination complaint procedures without fear of reprisal for having done so. However, the assurance of full due process to complainants should not and need not be accomplished at the expense of the rights of those individuals against whom accusations of discrimination have been made. It has become clear that, in the interest of fairness, persons named as alleged discriminating officials should have more clearly defined rights and a more significant role in the complaint process and that this can be accomplished without undermining the integrity of the complaint process.
4. There is in fact no regulatory requirement that a complaint of discrimination include identification of an "alleged discriminating official." Moreover, a complainant cannot always reasonably be expected to know which individual, if any, might have been responsible for the occurrence of a specific action or the promulgation of a particular policy. Complainants should not, therefore, be given the impression that they are required to identify "alleged discriminating officials" in complaints of discrimination. It is suggested that spaces included for this purpose on complaint forms (including forms reproduced from CSC Form 894) be obliterated on existing forms and omitted from future printings. Complainants who believe particular individuals have discriminated against them may, of course, identify those individuals in their complaints if they wish to do so; and this aspect will in any case be explored by investigators in those complaints which are accepted for processing.

Inquiries: Office of Federal Equal Employment Opportunity, Discrimination Complaints and Enforcement Section, (202) 632-7642

CSC Code: 713, Equal Employment Opportunity

Distribution: FPM (advance edition limited)

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5. The principal purpose of the discrimination complaint procedure is to determine whether in fact discrimination has occurred, so that remedial action can be taken as appropriate. Investigations and hearings in discrimination complaint cases are essentially fact-finding processes which have as their purpose the development and recording of evidence on which an informed and impartial decision can be based. It is not the purpose of the complaint procedure to indict or try individual officials; complaints are lodged "against" agencies, and not "against" individuals.

6. Nevertheless, agencies may properly decide to take disciplinary action against officials who are shown by the evidence compiled in connection with a discrimination complaint to have in fact been culpable of discrimination or other improper actions. Grievance or appeal channels are, of course, available to officials who wish to contest such action.

7. There are many cases, however, in which disciplinary action is determined to be unwarranted because the evidence does not support the allegations made against individuals, or in which the evidence clearly establishes that a person alleged to have discriminated against a complainant has in fact not been culpable. In either of these situations, unless the "alleged discriminating official" has had an opportunity to know precisely what has been alleged, and has been afforded a full and fair opportunity to present evidence, the official may justifiably feel unfairly burdened with the stigma often associated with having been named as an alleged discriminator. Under these circumstances, moreover, an alleged discriminating official might understandably be concerned about possible adverse effects on his or her career.

8. In the interest of fairness to all persons involved in the processing of discrimination complaints, and of assuring that the evidence compiled at various stages in the complaint process is complete in terms of presenting all relevant views on contentious matters, agencies should assure that persons named as "alleged discriminating officials" are adequately informed of any charges made against them, and are afforded a full and fair opportunity to respond to such charges.

Counseling

9. When, at the informal counseling stage, an aggrieved employee or applicant has named or otherwise identified an individual as being responsible for an alleged act of discrimination, the EEO counselor must solicit the views of that "alleged discriminating official" unless the counselor otherwise obtains and provides information which exonerates the official to the clear satisfaction of the aggrieved person. Preliminary to the counselor's interview with the official, the latter must be advised that he or she has been named or identified by a potential complainant, must be informed of the nature of any accusations made, and must be advised of the right to have a representative present during the interview to provide advice on how to respond to any questions the counselor may ask. The EEO counselor must be careful, however, not to reveal the identity of the aggrieved individual when the individual has not authorized the EEO counselor to do so.

Investigation

10. An alleged discriminating official, whether identified at the time a formal complaint is filed or during the course of the investigation, must be given an opportunity to respond to any and all allegations made against him or her. In

this respect, the investigator should interview and receive information from the alleged discriminating official as many times as may be necessary to assure that the official has an opportunity to respond to all of the allegations. Pertinent documents (i.e. documents in which the official is identified and charged with discrimination or other wrongdoing) intended for inclusion in the investigative file, including the EEO counselor's report, the complaint, the complainant's affidavit, and other affidavits in which the alleged discriminating official is named, must be made available to the official for this purpose. Names of and identifying information on persons other than the complainant and the alleged discriminating official should be deleted from copies of the documents shown to the alleged discriminating official, to protect such persons from unwarranted invasion of privacy.

11. The alleged discriminating official must be given full opportunity to state the facts as he or she sees them, in affidavit form, for inclusion in the investigative file. The official should also be given an opportunity to suggest witnesses who might be contacted for corroborating testimony, but should be informed (as should complainants under similar circumstances) that only those witnesses whose testimony is considered necessary to the investigation will be interviewed, and that the only testimony that will be obtained in affidavit form and included in the investigative file is that determined to be relevant and necessary.

12. The agency official who is overseeing the processing of the complaint (usually the equal employment opportunity officer) should keep an alleged discriminating official informed of the progress of the investigation in approximately the same manner in which the complainant is kept informed. When the investigation is completed, the EEO officer should review the investigative file to determine whether or not it contains information relevant to all of the allegations. If the EEO officer finds that there are allegations against the alleged discriminating official in the investigative report on which no opportunity was given the official to provide his or her version of the facts, then the EEO officer should require such additional investigation as may be needed for that purpose.

Informal Adjustment and Proposed Disposition

13. The EEO officer or other agency official responsible for attempting informal adjustment of a complaint may, at his or her discretion, consult with the alleged discriminating official regarding the terms under which the agency will attempt to resolve the complaint informally. If an informal adjustment is agreed upon, the agency must inform the alleged discriminating official of the terms of the agreement. If no agreement is reached, a copy of the agency's proposed disposition of the complaint must be provided to the alleged discriminating official.

Hearing

14. The alleged discriminating official would normally be expected to have personal knowledge of facts bearing on the complaint, and his or her testimony at a hearing, if one is conducted, would ordinarily be considered necessary by the parties to the complaint. However, if the official is not called to testify by either the complainant or the agency, the complaints examiner assigned to conduct the hearing in the case must assure that the alleged discriminating official is informed of the hearing and given an opportunity to testify if he or she wishes to do so. The examiner must make sure that the alleged discriminating official has an opportunity to comment for the record regarding any new allegations of wrongdoing on the official's part which are brought by other witnesses during the course of the hearing.

15. The alleged discriminating official has a right to have a representative present to provide advice at any time the official is asked for testimony during the complaint process, including the investigative and hearing stages. However, the representative's role at a hearing is limited to advising the alleged discriminating official on how to respond to questions. The presence of the alleged discriminating official and his or her representative at a hearing will be limited to the time the official appears as a witness. The representative does not have the right to examine and cross-examine witnesses. Only the complaints examiner and the representatives of the complainant and the agency may examine and cross-examine witnesses.

Final Decision

16. The agency must provide the alleged discriminating official a copy of the agency's final decision on the complaint.

- a. If the clear effect of the agency decision is to deny or reject the complainant's allegations against the alleged discriminating official, the latter should not be given access to the entire complaint file.
- b. If the agency decision, either directly through a finding of discrimination or indirectly through a finding of error, concludes or implies impropriety on the part of the alleged discriminating official, the entire complaint file--with names and identifying information deleted where appropriate as in paragraph 10 above--must be made available for his or her review.
- c. If the agency takes or proposes adverse action or other disciplinary action against the alleged discriminating official based on evidence developed in connection with the processing of the complaint, the entire complaint file--without deletions--must be made available for his or her review. For this purpose, "disciplinary action" includes any action (e.g., a requirement that the official undergo equal employment opportunity training) which would constitute censure of the alleged discriminating official's conduct or competence.

Appeals to the Commission

17. If a complainant appeals an agency decision to the Civil Service Commission's Appeals Review Board, the agency must provide a copy of the Board's decision to the alleged discriminating official. If the decision of the Board reverses or modifies that of the agency in such a manner as to affect the alleged discriminating official, the agency should apply the instructions outlined in paragraph 16 above as appropriate.

General Guidance

18. These instructions contemplate increased access for alleged discriminating officials to information contained in complaint files, which are subject to the provisions of the Privacy Act (5 U.S.C. § 552a). Disclosures to alleged discriminating officials will be made consistent with the foregoing instructions as a routine use. If alleged discriminating officials make requests pursuant to the Freedom of Information Act (5 U.S.C. § 552) for information contained in complaint files, disclosures also will be made, consistent with the foregoing instructions. To the extent that disclosures of information contained in complaint files would

not be consistent with the foregoing instructions, disclosures should be refused under exemptions (b)(5), (b)(6) and (b)(7)(A) and (C) of the Freedom of Information Act, 5 U.S.C. § 552 (b)(5), (b)(6), (b)(7)(A), (C).

19. Complainants, of course, receive copies of the investigative file, the hearing transcript, etc. While statements included in complaint files are obtained without a pledge of confidence (5 CFR 713.216(a)), those statements, as well as other documents in the files, frequently include information of a personal and sensitive nature. All persons given access to this information, including complainants and alleged discriminating officials, should be advised of the need to exercise discretion with regard to its use. In this regard, the regulatory prohibition (at 5 CFR 735.206) against use of certain official information for private purposes would have general applicability. In addition, Privacy Act restrictions against improper disclosure are binding on agency employees.

20. It is essential to the integrity of the complaint system that complainants, their representatives, and witnesses be free from restraint, interference, coercion, discrimination or reprisal at any stage of the complaint process. In view of the broadened role for alleged discriminating officials provided for in these instructions, it is imperative that agencies ensure, through training and other means of communication, that supervisory and management personnel are knowledgeable about the regulatory provisions in this regard (at 5 CFR 713.261), and understand the need to observe the spirit as well as the letter of the regulations.

21. The procedures outlined above relate specifically to the processing of individual complaints of discrimination under Sections 713.211 through 713.222 of the Commission's regulations. The principles reflected in these procedures, however, i.e., assuring that persons named as alleged discriminating officials are informed regarding any allegations made against them, are given a full and fair opportunity to respond for the record and are kept informed as to the progress and outcome of cases, should also be guiding in connection with the processing of class complaints of discrimination under Sections 713.601 through 713.614 of the regulations.



Raymond Jacobson
Executive Director

Part 713

Equal Opportunity

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AUTHORITY: The provisions of this Part 713 issued under 5 U.S.C. sections 1301, 3301, 3302, 7301; E.O. 10577, 3 CFR 1954-1958 Comp., p. 218; E.O. 11222, 3 CFR 1964-1965 Comp., p. 306; E.O. 11478, 3 CFR 1969 Comp., p. 133; 42 U.S.C. 2000e-16(b), unless otherwise noted.

SUBPART A. [RESERVED]

SUBPART B. EQUAL OPPORTUNITY WITHOUT REGARD TO RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN

General Provisions

Sec. 713.201 Purpose and applicability. (a) *Purpose.* This subpart sets forth the regulations under which an agency shall establish a continuing affirmative program for equal opportunity in employment and personnel operations without regard to race, color, religion, sex, or national origin and under which the Commission will review an agency's program and entertain an appeal from a person dissatisfied with an agency's decision or other final action on his complaint of discrimination on grounds of race, color, religion, sex, or national origin.

(b) *Applicability.* (1) This subpart applies (i) to military department as defined in section 102 of title 5, United States Code, executive agencies (other than the General Accounting Office) as defined in section 105 of title 5, United States Code, the United States Postal Service, and the Postal Rate Commission, and to the employees thereof, including employees paid from nonappropriated funds, and (ii) to those portions of the legislative and judicial branches of the Federal Government and the

government of the District of Columbia having positions in the competitive service and to the employees in those positions.

(2) This subpart does not apply to aliens employed outside the limits of the United States.

Sec. 713.202 General policy. It is the policy of the Government of the United States and of the government of the District of Columbia to provide equal opportunity in employment for all persons, to prohibit discrimination in employment because of race, color, religion, sex, or national origin, and to promote the full realization of equal employment opportunity through a continuing affirmative program in each agency.

Sec. 713.203 Agency program. The head of each agency shall exercise personal leadership in establishing, maintaining, and carrying out a continuing affirmative program designed to promote equal opportunity in every aspect of agency personnel policy and practice in the employment, development, advancement, and treatment of employees. Under the terms of its program, an agency shall:

(a) Provide sufficient resources to administer its equal employment opportunity program in a positive and effective manner and assure that the principal and operating officials responsible for carrying out the equal employment opportunity program meet established qualifications requirements;

(b) Conduct a continuing campaign to eradicate every form of prejudice or discrimination based upon race, color, religion, sex, or national origin, from the agency's personnel policies and practices and working conditions, including disciplinary action against employees who engage in discriminatory practices;

(c) Utilize to the fullest extent the present skills of employees by all means, including the redesigning of jobs where feasible so that tasks not requiring the full utilization of skills of incumbents are concentrated in jobs with lower skill requirements;

(d) Provide the maximum feasible opportunity to employees to enhance their skills through on-the-job training, work-study programs, and other training measures so that they

may perform at their highest potential and advance in accordance with their abilities;

(e) Communicate the agency's equal employment opportunity policy and program and its employment needs to all sources of job candidates without regard to race, color, religion, sex, or national origin, and solicit their recruitment assistance on a continuing basis;

(f) Participate at the community level with other employers, with schools and universities, and with other public and private groups in cooperative action to improve employment opportunities and community conditions that affect employability;

(g) Review, evaluate, and control managerial and supervisory performance in such a manner as to insure a continuing affirmative application and vigorous enforcement of the policy of equal opportunity, and provide orientation, training, and advice to managers and supervisors to assure their understanding and implementation of the equal employment opportunity policy and program;

(h) Provide recognition to employees, supervisors, managers, and units demonstrating superior accomplishment in equal employment opportunity;

(i) Inform its employees and recognized labor organizations of the affirmative equal employment opportunity policy and program and enlist their cooperation;

(j) Provide for counseling employees and applicants who believe they have been discriminated against because of race, color, religion, sex, or national origin and for resolving informally the matters raised by them;

(k) Provide for the prompt, fair, and impartial consideration and disposition of complaints involving issues of discrimination on grounds of race, color, religion, sex, or national origin; and

(1) Establish a system for periodically evaluating the effectiveness of the agency's overall equal employment opportunity effort.

Sec. 713.204 Implementation of agency program. To implement the program established under this subpart, an agency shall:

(a) Develop the plans, procedures, and regulations necessary to carry out its program established under this subpart;

(b) Appraise its personnel operations at regular intervals to assure their conformity with the policy in section 713.202 and its program established in accordance with section 713.203;

(c) Designate a Director of Equal Employment Opportunity and as many Equal Employment Opportunity Officers, Equal Employment Opportunity Counselors, Federal Women's Program Coordinators, and other persons as may be necessary, to assist the head of the agency to carry out the functions described in this subpart in all organizational units and locations of the agency. The functioning and the qualifications of the persons so designated shall be subject to review by the Commission. The Director of Equal Employment Opportunity shall be under the immediate supervision of the head of his agency, and shall be given the authority necessary to enable him to carry out his responsibilities under the regulations in this subpart;

(d) Assign to the Director of Equal Employment Opportunity the functions of:

(1) Advising the head of his agency with respect to the preparation of national and regional equal employment opportunity plans, procedures, regulations, reports, and other matters pertaining to the policy in section 713.202 and the agency program required to be established under section 713.203;

(2) Evaluating from time to time the sufficiency of the total agency program for equal employment opportunity and reporting thereon to the head of the agency with recommendations as to any improvement or correction needed, including remedial or disciplinary action with respect to managerial or supervisory employees who have failed in their responsibilities;

(3) When authorized by the head of the agency, making changes in programs and procedures designed to eliminate discriminatory practices and improve the agency's program for equal employment opportunity;

(4) Providing for counseling, by an Equal Employment Opportunity Counselor, of any aggrieved employee or applicant for employment who believes that he has been discriminated against because of race, color, religion,

sex, or national origin and for attempting to resolve on an informal basis the matter raised by the employee or applicant before a complaint of discrimination may be filed under section 713.214;

(5) Providing for the receipt and investigation of individual complaints of discrimination in personnel matters within the agency, subject to sections 713.211 through 713.222;

(6) Providing for the →acceptance and processing and/or rejection of class complaints in accordance with Subpart F of this part;←

(7) When authorized by the head of the agency, making the decision under section 713.221 for the head of the agency on complaints of discrimination and ordering such corrective measures as he may consider necessary, including the recommendation for such disciplinary action as is warranted by the circumstances when an employee has been found to have engaged in a discriminatory practice; and

(8) When not authorized to make the decision for the head of the agency on complaints of discrimination, reviewing, at his discretion, the record on any complaint before the decision is made under section 713.221 and making such recommendations to the head of the agency or his designee as he considers desirable, including the recommendation for such disciplinary action as is warranted by the circumstances when an employee is found to have engaged in a discriminatory practice;

(e) Insure that equal opportunity for women is an integral part of the agency's overall program by assigning to the Federal Women's Program Coordinators the function of advising the Director of Equal Employment Opportunity on matters affecting the employment and advancement of women;

(f) Publicize to its employees and post permanently on official bulletin boards:

(1) The names and addresses of the Director of Equal Employment Opportunity and the Federal Women's Program Coordinators;

(2) The name and address of the appropriate Equal Employment Opportunity Officer;

(3) The name and address of the Equal Employment Opportunity Counselor and the organizational units he serves; his availability

to counsel an employee or applicant for employment who believes that he has been discriminated against because of race, color, religion, sex, or national origin; and the requirement that an employee or applicant for employment must consult the Counselor as provided by section 713.213 about his allegation of discrimination because of race, color, religion, sex, or national origin before a complaint as provided by section 713.214 may be filed; and

(4) Time limits for contacting an Equal Employment Opportunity Counselor;

(g) Make reasonable accommodations to the religious needs of applicants and employees, including the needs of those who observe the Sabbath on other than Sunday, when those accommodations can be made (by substitution of another qualified employee, by a grant of leave, a change of a tour of duty, or other means) without undue hardship on the business of the agency. If an agency cannot accommodate an employee or applicant, it has a duty in a complaint arising under this subpart to demonstrate its inability to do so;

(h) Make readily available to its employees a copy of its regulations issued to carry out its program of equal employment opportunity; and

(i) Submit annually for the review and approval of the Commission written national and regional equal employment opportunity plans of action. Plans shall be submitted in a format prescribed by the Commission and shall include, but not be limited to—

(1) Provision for the establishment of training and education programs designed to provide maximum opportunity for employees to advance so as to perform at their highest potential;

(2) Description of the qualifications, in terms of training and experience relating to equal employment opportunity, of the principal and operating officials concerned with administration of the agency's equal employment opportunity program; and

(3) Description of the allocation of personnel and resources proposed by the agency to carry out its equal employment opportunity program.

Sec. 713.205 Commission review and evaluation of agency program operations. The

Commission shall review and evaluate agency program operations periodically, obtain such reports as it deems necessary, and report to the President as appropriate on overall progress. When it finds that an agency's program operations are not in conformity with the policy set forth in section 713.202 and the regulations in this subpart, the Commission shall require improvement or corrective action to bring the agency's program operations into conformity with this policy and the regulations in this subpart. The head of each department and agency shall comply with the rules, regulations, orders, and instructions issued by the Commission.

Agency Regulations for Processing Complaints of Discrimination

Sec. 713.211 General. An agency shall ensure that its regulations governing the processing of complaints of discrimination on grounds of race, color, religion, sex, or national origin comply with the principles and requirements in sections 713.212 through 713.222.

Sec. 713.212 Coverage. (a) The agency shall provide in its regulations for the acceptance of a complaint from any aggrieved employee or applicant for employment with that agency who believes that he has been discriminated against because of race, color, religion, sex, or national origin. A complaint may also be filed by an organization for the aggrieved person with his consent.

→(b) The agency shall provide in its regulations for the acceptance of class complaints in accordance with Subpart F.←

Sec. 713.213 Precomplaint processing. (a) An agency shall require that an aggrieved person who believes that he has been discriminated against because of race, color, religion, sex, or national origin consult with an Equal Employment Opportunity Counselor when he wishes to resolve the matter. The agency shall require the Equal Employment Opportunity Counselor to make whatever inquiry he believes necessary into the matter; to seek a solution of the matter on an informal basis; to counsel the aggrieved person concerning the issues in the matter; to

keep a record of his counseling activities so as to brief, periodically, the Equal Employment Opportunity Officer on those activities; and, when advised that a complaint of discrimination has been accepted from an aggrieved person, to submit a written report to the Equal Employment Opportunity Officer, with a copy to the aggrieved person, summarizing his actions and advice both to the agency and the aggrieved person concerning the issues in the matter. The Equal Employment Opportunity Counselor shall, insofar as is practicable, conduct his final interview with the aggrieved person not later than 21 calendar days after the date on which the matter was called to his attention by the aggrieved person. If the final interview is not concluded within 21 days and the matter has not previously been resolved to the satisfaction of the aggrieved person, the aggrieved person shall be informed in writing at that time of his right to file a complaint of discrimination. The notice shall inform the complainant of his right to file a complaint at any time after receipt of the notice up to 15 calendar days after the final interview (which shall be so identified in writing by the Equal Employment Opportunity Counselor) and the appropriate official with whom to file a complaint. The Counselor shall not attempt in any way to restrain the aggrieved person from filing a complaint. The Equal Employment Opportunity Counselor shall not reveal the identity of an aggrieved person who has come to him for consultation, except when authorized to do so by the aggrieved person, until the agency has accepted a complaint of discrimination from him.

(b) The agency shall assure that full cooperation is provided by all employees to the Equal Employment Opportunity Counselor in the performance of his duties under this section.

(c) The Equal Employment Opportunity Counselor shall be free from restraint, interference, coercion, discrimination, or reprisal in connection with the performance of his duties under this section.

Sec. 713.214 Filing and presentation of complaint. (a) *Time limits.* (1) An agency shall require that a complaint be submitted in writing by the complainant or his representative and be

signed by the complainant. The complaint may be delivered in person or submitted by mail. The agency may accept the complaint for processing in accordance with this subpart only if—

- (i) the complainant brought to the attention of the Equal Employment Opportunity Counselor the matter causing him to believe he had been discriminated against within 30 calendar days of the date of that matter, or, if a personnel action, within 30 calendar days of its effective date; and
- (ii) the complainant or his representative submitted his written complaint to an appropriate official within 15 calendar days of the date of his final interview with the Equal Employment Opportunity Counselor.

(2) The appropriate officials to receive complaints are the head of the agency, the agency's Director of Equal Employment Opportunity, the head of a field installation, an Equal Employment Opportunity Officer, a Federal Women's Program Coordinator, and such other officials as the agency may designate for that purpose. Upon receipt of the complaint, the agency official shall transmit it to the Director of Equal Employment Opportunity or appropriate Equal Employment Opportunity Officer who shall acknowledge its receipt in accordance with subparagraph (3) of this paragraph.

(3) A complaint shall be deemed filed on the date it is received, if delivered to an appropriate official, or on the date postmarked if addressed to an appropriate official designated to receive complaints. The agency shall acknowledge to the complainant or his representative in writing receipt of the complaint and advise the complainant in writing of all his administrative rights and of his right to file a civil action as set forth in section 713.281, including the time limits imposed on the exercise of these rights.

(4) The agency shall extend the time limits in this section (i) when the complainant shows that he was not notified of the time limits and was not otherwise aware of them, or that he was prevented by circumstances beyond his control from submitting the matter within the

time limits, or (ii) for other reasons considered sufficient by the agency.

(b) *Presentation of complaint.* At any stage in the presentation of a complaint, including the counseling stage under section 713.213, the complainant shall have the right to be accompanied, represented, and advised by a representative of his own choosing. If the complainant is an employee of the agency, he shall have a reasonable amount of official time to present his complaint if he is otherwise in an active duty status. If the complainant is an employee of the agency and he designates another employee of the agency as his representative, the representative shall have a reasonable amount of official time, if he is otherwise in an active duty status, to present the complaint.

Sec. 713.215 Rejection or cancellation of complaint. The head of the agency or his designee may reject a complaint which was not timely filed and shall reject those allegations in a complaint which are not within the purview of section 713.212 or which set forth identical matters as contained in a previous complaint filed by the same complainant which is pending in the agency or has been decided by the agency. He may cancel a complaint because of failure of the complainant to prosecute the complaint. He shall transmit the decision to reject or cancel by letter to the complainant and his representative. The decision letter shall inform the complainant of his right to appeal the decision of the agency to the Commission and of the time limit within which the appeal may be submitted and of his right to file a civil action as described in section 713.281.

Sec. 713.216 Investigation. (a) The Equal Employment Opportunity Officer shall advise the Director of Equal Employment Opportunity of the acceptance of a complaint. The Director of Equal Employment Opportunity shall provide for the prompt investigation of the complaint. The person assigned to investigate the complaint shall occupy a position in the agency which is not, directly or indirectly, under the jurisdiction of the head of that part of the agency in which the complaint arose. The agency shall authorize the investigator to

administer oaths and require that statements of witnesses shall be under oath or affirmation, without a pledge of confidence. The investigation shall include a thorough review of the circumstances under which the alleged discrimination occurred, the treatment of members of the complainant's group identified by his complaint as compared with the treatment of other employees in the organizational segment in which the alleged discrimination occurred, and any policies and practices related to the work situation which may constitute, or appear to constitute, discrimination even though they have not been expressly cited by the complainant. Information needed for an appraisal of the utilization of members of the complainant's group as compared to the utilization of persons outside the complainant's group shall be recorded in statistical form in the investigative file, but specific information as to a person's membership or nonmembership in the complainant's group needed to facilitate an adjustment of the complaint or to make an informed decision on the complaint shall, if available, be recorded by name in the investigative file. (As used in this subpart, the term "investigative file" shall mean the various documents and information acquired during the investigation under this section—including affidavits of the complainant, of the alleged discriminating official, and of the witnesses and copies of, or extracts from, records, policy statements, or regulations of the agency—organized to show their relevance to the complaint or the general environment out of which the complaint arose.) If necessary, the investigator may obtain information regarding the membership or nonmembership of a person in the complainant's group by asking each person concerned to provide the information voluntarily; he shall not require or coerce an employee to provide this information.

(b) The Director of Equal Employment Opportunity shall arrange to furnish to the person conducting the investigation a written authorization (1) to investigate all aspects of complaints of discrimination, (2) to require all employees of the agency to cooperate with him in the conduct of the investigation, and (3) to

require employees of the agency having any knowledge of the matter complained of to furnish testimony under oath or affirmation without a pledge of confidence.

Sec. 713.217 Adjustment of complaint and offer of hearing. (a) The agency shall provide an opportunity for adjustment of the complaint on an informal basis after the complainant has reviewed the investigative file. For this purpose, the agency shall furnish the complainant or his representative a copy of the investigative file promptly after receiving it from the investigator, and provide opportunity for the complainant to discuss the investigative file with appropriate officials. If an adjustment of the complaint is arrived at, the terms of the adjustment shall be reduced to writing and made part of the complaint file, with a copy of the terms of the adjustment provided the complainant. If the agency does not carry out, or rescinds, any action specified by the terms of the adjustment for any reason not attributable to acts or conduct of the complainant, the agency shall, upon the complainant's written request, reinstate the complaint for further processing from the point processing ceased under the terms of the adjustment.

(b) If an adjustment of the complaint is not arrived at, the complainant shall be notified in writing (1) of the proposed disposition of the complaint, (2) of his right to a hearing and decision by the agency head or his designee if he notifies the agency in writing within 15 calendar days of the receipt of the notice that he desires a hearing, and (3) of his right to a decision by the head of the agency or his designee without a hearing.

(c) If the complainant fails to notify the agency of his wishes within the 15-day period prescribed in paragraph (b) of this section, the appropriate Equal Employment Opportunity Officer may adopt the disposition of the complaint proposed in the notice sent to the complainant under paragraph (b) of this section as the decision of the agency on the complaint, when delegated the authority to make a decision for the head of the agency under those circumstances. When this is done, the Equal Employment Opportunity Officer shall trans-

mit the decision by letter to the complainant and his representative which shall inform the complainant of his right of appeal to the Commission and the time limit applicable thereto and of his right to file a civil action as described in section 713.231. If the Equal Employment Opportunity Officer does not issue a decision under this paragraph, the complaint, together with the complaint file, shall be forwarded to the head of the agency, or his designee, for decision under section 713.221.

Sec. 713.218 *Hearing.* (a) *Complaints examiner.* The hearing shall be held by a complaints examiner who must be an employee of another agency except when the agency in which the complaint arose is (1) the government of the District of Columbia or (2) an agency which, by reason of law, is prevented from divulging information concerning the matter complained of to a person who has not received the security clearance required by that agency, in which event the agency shall arrange with the Commission for the selection of an impartial employee of the agency to serve as complaints examiner. (For purposes of this paragraph, the Department of Defense is considered to be a single agency.) The agency in which the complaint arose shall request the Commission to supply the name of a complaints examiner who has been certified by the Commission as qualified to conduct a hearing under this section.

(b) *Arrangements for hearing.* The agency in which the complaint arose shall transmit the complaint file containing all the documents described in section 713.222 which have been acquired up to that point in the processing of the complaint, including the original copy of the investigative file (which shall be considered by the complaints examiner in making his recommended decision on the complaint), to the complaints examiner who shall review the complaint file to determine whether further investigation is needed before scheduling the hearing. When the complaints examiner determines that further investigation is needed, he shall remand the complaint to the Director of Equal Employment Opportunity for further investigation or arrange for the appearance

of witnesses necessary to supply the needed information at the hearing. The requirements of section 713.216 apply to any further investigation by the agency on the complaint. The complaints examiner shall schedule the hearing for a convenient time and place.

(c) *Conduct of hearing.* (1) Attendance at the hearing is limited to persons determined by the complaints examiner to have a direct connection with the complaint.

(2) The complaints examiner shall conduct the hearing so as to bring out pertinent facts, including the production of pertinent documents. Rules of evidence shall not be applied strictly, but the complaints examiner shall exclude irrelevant or unduly repetitious evidence. Information having a bearing on the complaint or employment policy or practices relevant to the complaint shall be received in evidence. The complainant, his representative, and the representatives of the agency at the hearing shall be given the opportunity to cross-examine witnesses who appear and testify. Testimony shall be under oath or affirmation.

(d) *Powers of complaints examiner.* In addition to the other powers vested in the complaints examiner by the agency in accordance with this subpart, the agency shall authorize the complaints examiner to:

- (1) Administer oaths or affirmations;
- (2) Regulate the course of the hearing;
- (3) Rule on offers of proof;
- (4) Limit the number of witnesses whose testimony would be unduly repetitious; and
- (5) Exclude any person from the hearing for contumacious conduct or misbehavior that obstructs the hearing.

(e) *Witnesses at hearing.* The complaints examiner shall request any agency subject to this subpart to make available as a witness at the hearing an employee requested by the complainant when he determines that the testimony of the employee is necessary. He may also request the appearance of an employee of any Federal agency whose testimony he determines is necessary to furnish information pertinent to the complaint under consideration. The complaints examiner shall give the complainant his reasons for the denial of a request

for the appearance of employees as witnesses and shall insert those reasons in the record of the hearing. An agency to whom a request is made shall make its employees available as witnesses at a hearing on a complaint when requested to do so by the complaints examiner and it is not administratively impracticable to comply with the request. When it is administratively impracticable to comply with the request for a witness, the agency to whom request is made shall provide an explanation to the complaints examiner. If the explanation is inadequate, the complaints examiner shall so advise the agency and request it to make the employee available as a witness at the hearing. If the explanation is adequate, the complaints examiner shall insert it in the record of the hearing, provide a copy to the complainant, and make arrangements to secure testimony from the employee through a written interrogatory. An employee of an agency shall be in a duty status during the time he is made available as a witness.

(f) *Record of hearing.* The hearing shall be recorded and transcribed verbatim. All documents submitted to, and accepted by, the complaints examiner at the hearing shall be made part of the record of the hearing. If the agency submits a document that is accepted, it shall furnish a copy of the document to the complainant. If the complainant submits a document that is accepted, he shall make the document available to the agency representative for reproduction.

(g) *Findings, analysis, and recommendations.* The complaints examiner shall transmit to the head of the agency or his designee (1) the complaint file (including the record of the hearing), (2) the findings and analysis of the complaints examiner with regard to the matter which gave rise to the complaint and the general environment out of which the complaint arose, and (3) the recommended decision of the complaints examiner on the merits of the complaint, including recommended remedial action, where appropriate, with regard to the matter which gave rise to the complaint and the general environment

out of which the complaint arose. The complaints examiner shall notify the complainant of the date on which this was done. In addition, the complaints examiner shall transmit, by separate letter to the Director of Equal Employment Opportunity, whatever findings and recommendations he considers appropriate with respect to conditions in the agency which do not bear directly on the matter which gave rise to the complaint or which bear on the general environment out of which the complaint arose.

Sec. 713.219 *Relationship to other agency appellate procedures.* When an employee makes a written allegation of discrimination on grounds of race, color, religion, sex, or national origin, in connection with an action that would otherwise be processed under a grievance or other system of the agency, the allegation of discrimination shall be processed under this part.

Sec. 713.220 *Avoidance of delay.* (a) The complaint shall be resolved promptly. To this end, both the complainant and the agency shall proceed with the complaint without undue delay so that the complaint is resolved within 180 calendar days after it was filed, including time spent in the processing of the complaint by the complaints examiner under section 713.218.

(b) The head of the agency or his designee may cancel a complaint if the complainant fails to prosecute the complaint without undue delay. However, instead of cancelling for failure to prosecute, the complaint may be adjudicated if sufficient information for that purpose is available.

(c) The agency shall furnish the Commission monthly reports on all complaints pending within the agency in a form specified by the Commission. If an agency has not issued a final decision, and has not requested the Commission to supply a complaints examiner, within 75 calendar days from the date a complaint was filed, the Commission may require the agency to take special measures to ensure prompt processing of the complaint or may assume responsibility for processing the complaint, including supplying an investigator to conduct any necessary investigation on be-

half of the agency. When the Commission supplies an investigator, the agency shall reimburse the Commission for all expenses incurred in connection with the investigation and shall notify the complainant in writing of the proposed disposition of the complaint no later than 15 calendar days after its receipt of the investigative report.

(d) When the complaints examiner has submitted a recommended decision finding discrimination and the agency has not issued a final decision within 180 calendar days after the date the complaint was filed, the complaints examiner's recommended decision shall become a final decision binding on the agency 30 calendar days after its submission to the agency. In such event, the agency shall so notify the complainant of the decision and furnish to him a copy of the findings, analysis, and recommended decision of the complaints examiner under section 713.218(g) and a copy of the hearing record and also shall notify him in writing of his right of appeal to the Commission and the time limits applicable thereto and of his right to file a civil action as described in section 713.281.

Sec. 713.221 Decision by head of agency or designee. (a) The head of the agency, or his designee, shall make the decision of the agency on a complaint based on information in the complaint file. A person designated to make the decision for the head of the agency shall be one who is fair, impartial, and objective.

(b)(1) The decision of the agency shall be in writing and shall be transmitted by letter to the complainant and his representative. When there has been no hearing, the decision shall contain the specific reasons in detail for the agency's action, including any remedial action taken.

(2) When there has been a hearing on the complaint, the decision letter shall transmit a copy of the findings, analysis, and recommended decision of the complaints examiner under section 713.218(g) and a copy of the hearing record. The decision of the agency shall adopt, reject, or modify the decision recommended by the complaints examiner. If the decision is to reject or modify the recommended decision, the de-

cision letter shall set forth the specific reasons in detail for rejection or modification.

(3) When there has been no hearing and no decision under section 713.217(c), the decision letter shall set forth the findings, analysis, and decision of the head of the agency or his designee.

(c) The decision of the agency shall require any remedial action authorized by law determined to be necessary or desirable to resolve issues of discrimination and to promote the policy of equal opportunity, whether or not there is a finding of discrimination. When discrimination is found, the agency shall require remedial action to be taken in accordance with section 713.271, shall review the matter giving rise to the complaint to determine whether disciplinary action against alleged discriminatory officials is appropriate, and shall record the basis for its decision to take, or not to take, disciplinary action but this decision shall not be included in the complaint file.

(d) The decision letter shall inform the complainant of his right to appeal the decision of the agency to the Commission, of his right to file a civil action in accordance with section 713.281, and of the time limits applicable thereto.

Sec. 713.222 Complaint file. The agency shall establish a complaint file. Except as provided in section 713.221(c), this file shall contain all documents pertinent to the complaint. The complaint file shall include copies of (a) the notice of the Equal Employment Opportunity Counselor to the aggrieved person under section 713.213 (a), (b) the written report of the Equal Employment Opportunity Counselor under section 713.213 to the Equal Employment Opportunity Officer on whatever precomplaint counseling efforts were made with regard to the complainant's case, (c) the complaint, (d) the investigative file, (e) if the complaint is withdrawn by the complainant, a written statement of the complainant or his representative to that effect, (f) if adjustment of the complaint is arrived at under section 713.217, the written record of the terms of the adjustment, (g) if no adjustment of the complaint is arrived at under section 713.217, a copy of the letter

notifying the complainant of the proposed disposition of the complaint and of his right to a hearing, (h) if decision is made under section 713.217(c), a copy of the letter to the complainant transmitting that decision, (i) if a hearing was held, the record of the hearing, together with the complaints examiner's findings, analysis, and recommended decision on the merits of the complaint, (j) if the Director of Equal Employment Opportunity is not the designee, the recommendations, if any, made by him to the head of the agency or his designee, and (j) if decision is made under section 713.221, a copy of the letter transmitting the decision of the head of the agency or his designee. The complaint file shall not contain any document that has not been made available to the complainant or to his designated physician under section 294.401 of this chapter.

Appeal to the Commission

Sec. 713.231 Entitlement. (a) Except as provided by paragraph (b) of this section, a complainant may appeal to the Commission the decision of the head of the agency, or his designee:

(1) To reject his complaint, or a portion thereof, for reasons covered by section 713.215; or

(2) To cancel his complaint because of the complainant's failure to prosecute his complaint; or

(3) On the merits of the complaint, under section 713.217(c) or 713.221, but the decision does not resolve the complaint to the complainant's satisfaction.

(b) A complainant may not appeal to the Commission under paragraph (a) of this section when the issue of discrimination giving rise to the complaint is being considered, or has been considered, in connection with any other appeal by the complainant to the Commission.

Sec. 713.232 Where to appeal. The complainant shall file his appeal in writing, either personally or by mail, with the Appeals Review Board, U.S. Civil Service Commission, Washington, D.C. 20415.

Sec. 713.233 Time limit. (a) Except as provided in paragraph (b) of this section, a complainant may file an appeal at any time after receipt of his agency's notice of final decision on his complaint but not later than 15 calendar days after receipt of that notice.

(b) The time limit in paragraph (a) of this section may be extended in the discretion of the Appeals Review Board, upon a showing by the complainant that he was not notified of the prescribed time limit and was not otherwise aware of it or that circumstances beyond his control prevented him from filing an appeal within the prescribed time limit.

Sec. 713.234 Appellate procedures. The Appeals Review Board shall review the complaint file and all relevant written representations made to the board. The board may remand a complaint to the agency for further investigation or a rehearing if it considers that action necessary or have additional investigation conducted by Commission personnel. This subpart applies to any further investigation or rehearing resulting from a remand from the board. There is no right to a hearing before the board. The board shall issue a written decision setting forth its reasons for the decision and shall send copies thereof to the complainant, his designated representative, and the agency. When corrective action is ordered, the agency shall report promptly to the board that the corrective action has been taken. The decision of the board is final, but shall contain a notice of the right to file a civil action in accordance with section 713.282.

Sec. 713.235 Review by the Commissioners. (a) The Commissioners may, in their discretion, reopen and reconsider any previous decision when the party requesting reopening submits written argument or evidence which tends to establish that:

(1) New and material evidence is available that was not readily available when the previous decision was issued;

(2) The previous decision involves an erroneous interpretation of law or regulation or a misapplication of established policy; or

(3) The previous decision is of a precedential nature involving a new or unreviewed policy consideration that may have effects beyond the actual case at hand, or is otherwise of such an exceptional nature as to merit the personal attention of the Commissioners.

(b) When an agency gives notice of intent to request reopening within the time specified in the decision of the Appeals Review Board for the agency report of corrective action, the agency may not effect the corrective action recommended by the Board except as provided in this paragraph. When the agency gives notice of intent to request reopening, and when the appeal involves removal, separation, or suspension continuing beyond the date of the request for reopening, and when the Board decision recommends retroactive restoration, the agency shall comply with the Board decision only to the extent of the temporary or conditional restoration of the employee to duty status in the position recommended by the Board pending the outcome of the agency request for reopening. The agency shall notify the Board and the employee in writing that the corrective action it takes is temporary or conditional at the same time it gives notice of intent to request reopening. When the agency does not give notice of intent to request reopening within the time specified in the Board decision for the agency report of corrective action, or when, after giving notice of intent to request reopening, the agency does not file a request for reopening within 30 days from the date of the Board decision, or when a request to reopen is denied, the agency shall effect the corrective action recommended by the Board, and there is no further right by the agency to request reopening.

However, service under the temporary or conditional restoration provisions of this paragraph may not be credited toward the completion of a probationary or trial period, eligibility for a within-grade increase, or the completion of the service requirement for career tenure.

Sec. 713.236 Relationship to other appeals. When the basis of the complaint of discrimination because of race, color, religion, sex, or

national origin involves an action which is otherwise appealable to the Commission and the complainant having been informed by the agency of his right to proceed under this subpart elects to proceed by appeal to the Commission, the case, including the issue of discrimination, will be processed under the regulations appropriate to that appeal when the complainant makes a timely appeal to the Commission in accordance with those regulations.

Reports to the Commission

Sec. 713.241 Reports to the Commission on complaints. Each agency shall report to the Commission information concerning precomplaint counseling and the status and disposition of complaints under this subpart at such times and in such manner as the Commission prescribes.

Consolidation of Complaints

Sec. 713.251 Joint processing and consolidation of complaints. (a) Two or more complaints of discrimination filed by employees or applicants for employment with the agency consisting of substantially similar allegations of discrimination may, with the written permission of the complainants, be consolidated by the agency or the Commission.

(b) Two or more individual complaints of discrimination from the same employee or applicant for employment may, at the discretion of the agency or the Commission, be joined for processing after notifying the individual that the complaints will be processed jointly.

Freedom From Reprisal or Interferences

Sec. 713.261. Freedom from reprisal. (a) Complainants, their representatives, and witnesses shall be free from restraint, interference, coercion, discrimination or reprisal at any stage in the presentation and processing of a complaint, including the counseling stage under section 713, or any time thereafter.

Sec. 713.262. Review of allegations of reprisal. (a) *Choice of review procedures.* A complainant, his representative, or a witness who alleges restraint, interference, coercion, discrimination,

or reprisal in connection with the presentation of a complaint under this subpart, may, if an employee or applicant, have the allegation reviewed as an individual complaint of discrimination subject to sections 713.211 through 713.222 or as a charge subject to paragraph (b) of this section.

(b) *Procedure for review of charges.* (1) An employee or applicant may file a charge of restraint, interference, coercion, discrimination, or reprisal in connection with the presentation of a complaint with an appropriate agency official as defined in section 713.214(a)(2) within 15 calendar days of the date of the alleged occurrence. The charge shall be in writing and shall contain all pertinent facts. Except as provided in subparagraph (2) of this paragraph, the agency shall undertake an appropriate inquiry into such a charge and shall forward to the Commission within 15 calendar days of the date of its receipt a copy of the charge and report of action taken. The agency shall also provide the charging party with a copy of the report of action taken. When the agency has not completed an appropriate inquiry 15 calendar days after receipt of such a charge, the charging party may submit a written statement with all pertinent facts to the Commission, and the Commission shall require the agency to take whatever action is appropriate.

(2) When a complainant, after completion of the investigation of his complaint under section 713.216, requests a hearing and in connection with that complaint alleges restraint, interference, coercion, discrimination, or reprisal, the complaints examiner assigned to hold the hearing shall consider the allegations as an issue in the complaint at hand or refer the matter to the agency for further processing under the procedure chosen by the complainant pursuant to paragraph (a) of this section.

Remedial Actions

Sec. 713.271 Remedial actions. (a) *Remedial action involving an applicant.* (1) When an agency, or the Commission, finds that an applicant for employment has been discriminated against and except for that discrimination would have been hired, the agency shall offer

the applicant employment of the type and grade denied him. The offer shall be made in writing. The individual shall have 15 calendar days from receipt of the offer within which to accept or decline the offer. Failure to notify the agency of his decision within the 15-day period will be considered a declination of the offer, unless the individual can show that circumstances beyond his control prevented him from responding within the time limit. If the offer is accepted, appointment shall be retroactive to the date the applicant would have been hired, subject to the limitation in subparagraph (4) of this paragraph. Back pay, computed in the same manner prescribed by section 550.804 of this chapter, shall be awarded from the beginning of the retroactive period, subject to the same limitation, until the date the individual actually enters on duty. The individual shall be deemed to have performed service for the agency during this period of retroactivity for all purposes except for meeting service requirements for completion of a probationary or trial period that is required. If the offer is declined, the agency shall award the individual a sum equal to the back pay he would have received, computed in the same manner prescribed by section 550.804 of this chapter, from the date he would have been appointed until the date the offer was made, subject to the limitation of subparagraph (4) of this paragraph. The agency shall inform the applicant, in its offer, of his right to this award in the event he declines the offer.

(2) When an agency, or the Commission, finds that discrimination existed at the time the applicant was considered for employment but does not find that the individual is the one who would have been hired except for discrimination, the agency shall consider the individual for any existing vacancy of the type and grade for which he had been considered initially and for which he is qualified before consideration is given to other candidates. If the individual is not selected, the agency shall record the reasons for non-selection. If no vacancy exists, the agency shall give him this priority consideration for the next vacancy for which he is qualified. This priority

shall take precedence over priorities provided under other regulations in this chapter.

(3) This paragraph shall be cited as the authority under which the above-described appointments or awards of back pay shall be made.

(4) A period of retroactivity or a period for which back pay is awarded under this paragraph may not extend from a date earlier than two years prior to the date on which the complaint was initially filed by the applicant. If a finding of discrimination was not based on a complaint, the period of retroactivity or period for which back pay is awarded under this paragraph may not extend earlier than two years prior to the date the finding of discrimination was recorded.

(b) *Remedial action involving an employee.* When an agency, or the Commission, finds that an employee of the agency was discriminated against and as a result of that discrimination was denied an employment benefit, or an administrative decision adverse to him was made, the agency shall take remedial actions which shall include one or more of the following, but need not be limited to these actions:

(1) Retroactive promotion, with back pay computed in the same manner prescribed by section 550.804 of this chapter, when the record clearly shows that but for the discrimination the employee would have been promoted or would have been employed at a higher grade, except that the back pay liability may not accrue from a date earlier than two years prior to the date the discrimination complaint was filed, but, in any event, not to exceed the date he would have been promoted. If a finding of discrimination was not based on a complaint, the back pay liability may not accrue from a date earlier than two years prior to the date the finding of discrimination was recorded, but, in any event, not to exceed the date he would have been promoted.

(2) Consideration for promotion to a position for which he is qualified before consideration is given to other candidates when the record shows that discrimination existed at the time selection for promotion was made but it is not clear that except for the discrimination the employee would have been promoted. If the individual is

not selected, the agency shall record the reasons for nonselection. This priority consideration shall take precedence over priorities under other regulations in this chapter.

(3) Cancellation of an unwarranted personnel action and restoration of the employee.

(4) Expunction from the agency's records of any reference to or any record of an unwarranted disciplinary action that is not a personnel action.

(5) Full opportunity to participate in the employee benefit denied him (e.g., training, preferential work assignments, overtime scheduling).

Right To File a Civil Action

Sec. 713.281 Statutory right. An employee or applicant is authorized by section 717(c) of the Civil Rights Act, as amended, 84 Stat. 112, to file a civil action in an appropriate U.S. district court:

(a) Within thirty (30) calendar days of his receipt of notice of final action taken by his agency on a complaint,

(b) After one hundred-eighty (180) calendar days from the date of filing a complaint with his agency if there has been no decision,

(c) Within thirty (30) calendar days of his receipt of notice of final action taken by the Commission on his complaint, or,

(d) After one hundred-eighty (180) calendar days from the date of filing an appeal with the Commission if there has been no Commission decision.

Sec. 713.282 Notice of right. An agency shall notify an employee or applicant of his right to file a civil action, and of the 30-day time limit for filing, in any final action on a complaint under sections 713.215, 713.217, 713.220, or section 713.221. The Commission shall notify an employee or applicant of his right to file a civil action, and of the 30-day time limit for filing, in any decision under section 713.234.

Sec. 713.283 Effect on administrative processing. The filing of a civil action by an employee or applicant does not terminate agency processing of a complaint or Commission processing of an appeal under this subpart.

SUBPART C. MINORITY GROUP STATISTICS SYSTEM

Sec. 713.301 Applicability. (a) This subpart applies (1) to military departments as defined in section 102 of title 5, United States Code, executive agencies (other than the General Accounting office) as defined in section 105 of title 5, United States Code, the United States Postal Service, and the Postal Rate Commission, and to the employees thereof including employees paid from nonappropriated funds, and (2) to those portions of the legislative and judicial branches of the Federal Government and the government of the District of Columbia having positions in the competitive service and to the employees in those positions.

(b) This subpart does not apply to aliens employed outside the limits of the United States.

Sec. 713.302 Agency systems. (a) Each agency shall establish a system which provides statistical employment information by race or national origin.

(b) Data shall be collected only by visual identification and shall be disclosed only in the form of gross statistics. An agency shall not collect or maintain any information of the race or national origin of individual employees except when an automated data processing system is used in accordance with standards and requirements prescribed by the Commission to insure individual privacy and the separation of that information from personnel records.

(c) Each system is subject to the following controls:

(1) Only those categories of race and national origin prescribed by the Commission may be used;

(2) Only the specific procedures for the collection and maintenance of data that are prescribed or approved by the Commission may be used;

(3) The Commission shall review the operation of the agency system to insure adherence to Commission procedures and requirements.

An agency may make an exception to the prescribed procedures and requirements only with the advance written approval of the Commission.

(d) The agency may use the data only in studies and analyses which contribute affirmatively to achieving the objectives of the equal employment opportunity program. An agency shall not establish a quota for the employment of persons on the basis of race, color, religion, sex, or national origin.

(e) An agency shall report to the Commission on employment by race and national origin in the form and at such times as the Commission may require.

SUBPART D. EQUAL OPPORTUNITY WITHOUT REGARD TO POLITICS, MARITAL STATUS, OR PHYSICAL HANDICAP

Sec. 713.401 Equal opportunity without regard to politics, marital status, or physical handicap. (a) *In appointments and position changes.* In determining the merit and fitness of a person for competitive appointment or appointment by noncompetitive action to a position in the competitive service, an appointing officer shall not discriminate on the basis of the person's political affiliations, except when required by statute, or marital status, nor shall he discriminate on the basis of a physical handicap with respect to any position the duties of which may be efficiently performed by a person with the physical handicap.

(b) *In adverse actions and terminations of probationers.* An agency may not take an adverse action against an employee covered by part 752 of this chapter, nor effect the termination of a probationer under part 315 of this chapter, (1) for political reasons, except when required by statute, (2) that is based on discrimination because of marital status, or (3) for physical handicap with respect to any position the duties of which may be efficiently performed by a person with the physical handicap.

**SUBPART E. NONDISCRIMINATION
ON ACCOUNT OF AGE****General Provisions**

Sec. 713.501 Purpose and applicability. (a) *Purpose.* This subpart sets forth the policy under which an agency shall establish a continuing program to assure nondiscrimination on account of age and the regulations under which an agency will process complaints of discrimination on account of age.

(b) *Applicability.* (1) This subpart applies (i) to military departments as defined in section 102 of title 5, United States Code, and Executive agencies as defined in section 105 of title 5, United States Code, the United States Postal Service and the Postal Rate Commission, and to the employees thereof, including employees paid from nonappropriated funds, and (ii) to those units of the legislative and judicial branches of the Federal Government and the Government of the District of Columbia having positions in the competitive service and to the employees of those positions.

(2) This subpart does not apply to aliens employed outside the limits of the United States.

(3) Except as provided by paragraph (b)(2) of this section, this subpart applies to applicants for positions to which paragraph (b)(1) of this section applies.

(4) This subpart applies only to employees or applicants who are at least 40 years of age and less than 65 years of age.

(c) *Exceptions.* Reasonable exemptions to the provisions of this subpart may be established by the Commission for each position for which the Commission establishes a maximum age requirement on the basis of a determination that age is a bona fide occupational qualification necessary to the performance of the duties of the position.

Sec. 713.502 General policy. It is policy of the Government of the United States (and of the government of the District of Columbia) to prohibit discrimination in employment on account of age to assure that all personnel actions affecting employees or applicants for

employment are free from discrimination on account of age.

**Agency Regulations for Processing
Complaints of Discrimination**

Sec. 713.511 General. An agency shall provide regulations governing the acceptance and processing of complaints of discrimination on account of age which, subject to section 713.514, comply with the principles and requirements in sections 713.213 through 713.222, 713.241 and 713.261 through 713.271 of this part.

Sec. 713.512 Coverage. The agency shall provide in its regulations for the acceptance of a complaint from any aggrieved employee or applicant for employment with the agency who believes that he or she has been discriminated against on account of age and who was at least 40 years of age but less than 65 years of age at the time of the action complained of. A complaint may also be filed by an organization for the person with his or her consent.

Sec. 713.513 Effect on administrative processing. The filing of a civil action by an employee or applicant does not terminate agency processing of a complaint or Commission processing of an appeal under this subpart.

Sec. 713.514 Exclusions. Sections ★713.281, and 713.282 shall not apply to the processing of discrimination complaints on account of age. The reference to section 713.281 in sections 713.215, 713.217, 713.220, and 713.221 may not be included in agency regulations required by this subpart.

Sec. 713.521 Appeal to the Commission. Except for the requirements in section 713.234 that the decision of the Board of Appeals and Review contain a notice of the right to file a civil action in accordance with section 713.282, sections 713.231 through 713.236 of this part shall apply to this subpart.

**SUBPART F—CLASS COMPLAINTS OF
DISCRIMINATION****Agency Regulations for Processing Class
Complaints of Discrimination**

Sec. 713.601 Definitions. (a) A "class" is a group of agency employees, former agency

employees, and/or applicants for employment with the agency, on whose behalf it is alleged that they have been, are being, or may be adversely affected, by an agency personnel management policy or practice which the agency has authority to rescind or modify, and which discriminates against the group on the basis of their common race, color, religion, sex, national origin, and/or age.

(b) A "class complaint" is a written complaint of discrimination filed on behalf of a class by the agent of the class alleging that:

(1) The class is so numerous that a consolidated complaint of the members of the class is impractical;

(2) There are questions of fact common to the class;

(3) The claims of the agent of the class are typical of the claims of the class;

(4) The agent of the class, or his/her representative, if any, will fairly and adequately protect the interests of the class.

(c) An "agent of the class" is a class member who acts for the class during the processing of the class complaint.

(d) "Age" is an inclusive term which means the ages of 40 through 64 years.

Sec. 713.602 Precomplaint processing. (a) An employee or applicant who wishes to be an agent and who believes he/she has been discriminated against shall consult with an Equal Employment Opportunity Counselor within 90 calendar days of the matter giving rise to the allegation of individual discrimination or 90 calendar days of its effective date if a personnel action.

(b) The Counselor shall (1) advise the aggrieved person of the discrimination complaint procedures, of his/her right to representation throughout the precomplaint and complaint processes, and of the right to anonymity only during the precomplaint process; (2) make whatever inquiry is believed necessary; (3) make an attempt at informal resolution through discussion with appropriate officials; (4) counsel the aggrieved person concerning the issues involved; (5) inform the Equal Employment Opportunity Officer and other

appropriate officials when corrective action is believed necessary; (6) keep a record of all counseling activities; and (7) summarize actions and advice in writing both to the Equal Employment Opportunity Officer and the aggrieved person concerning the issues in the personnel management policy or practice.

(c) The Counselor shall conduct a final interview and terminate counseling with the aggrieved person not later than 30 calendar days after the date on which the allegation of discrimination was called to the attention of the Counselor. During the final interview, the Counselor shall inform the aggrieved person in writing that counseling is terminated and that he/she has the right to file a class complaint of discrimination with appropriate officials of the agency.

(d) The Counselor shall not attempt in any way to restrain the aggrieved person from filing a complaint nor to encourage the person to file a complaint.

(e) The Counselor shall not reveal the identity of an aggrieved person during the period of consultation, except, when authorized to do so by the aggrieved person.

(f) The agency shall ensure that full cooperation is provided by all employees to Counselors in the performance of their duties under this section. Counselors shall have routine access to personnel records of the agency without unwarranted invasion of privacy.

(g) Corrective action taken as a result of counseling shall be consistent with law, Executive order, and Civil Service regulations, rules, and instructions.

Sec. 713.603 Filing and presentation of a class complaint. (a) The complaint must be submitted in writing by the agent or his/her representative and be signed by the agent.

(b) The complaint shall set forth specifically and in detail: (1) A description of the agency personnel management policy or practice giving rise to the complaint; and (2) A description of the resultant personnel action or matter adversely affecting the agent.

(c) The complaint must be filed not later than 15 calendar days after the agent's receipt

of the notice of final interview with the Counselor.

(d) The officials with whom complaints may be filed are the head of the agency, a designee of the head of the agency, and the Director of Equal Employment Opportunity.

(e) A complaint shall be deemed filed on the date it is postmarked, or, in the absence of a postmark, on the date it is received by an official with whom complaints may be filed.

(f) At all stages, including counseling, in the preparation and presentation of a complaint, or claim, and appeal from a decision on a complaint, or claim, the agent or claimant shall have the right to be accompanied, represented, and advised by a representative of his/her own choosing, provided the choice of a representative does not involve a conflict of interest or conflict of position. The representative shall be designated in writing and the designation made a part of the class complaint file.

(g) If the agent is an employee in an active duty status, he/she shall have a reasonable amount of official time to prepare and present his/her complaint. Employees, including attorneys, who are representing employees of the same agency in discrimination complaint cases must be permitted to use a reasonable amount of official time to carry out that responsibility whenever it is not inconsistent with the faithful performance of their duties. Although there is no requirement that an agency permit its own employees to use official time for the purpose of representing employees of other agencies, an agency may do so at its discretion. If the use of official time is not granted in such cases, employees may be granted, at their request, annual leave, or leave without pay.

Sec. 713.604 Acceptance, Rejection or Cancellation. (a) Within 10 calendar days of an agency's receipt of a complaint, the agency shall forward the complaint, along with a copy of the Counselor's report and any other information pertaining to timeliness or other relevant circumstances related to the complaint, to the Commission. The Commission shall assign the complaint to a Complaints Examiner who may be an employee of the Federal Employee

Appeals Authority and who is not an employee of the agency in which the complaint arose.

(b) The Complaints Examiner may recommend that the agency reject the complaint, or a portion thereof, for any of the following reasons:

(1) It was not timely filed;

(2) It consists of an allegation identical to an allegation contained in a previous complaint filed on behalf of the same class which is pending in the agency or which has been resolved or decided by the agency;

(3) It is not within the purview of this subpart;

(4) The agent failed to consult a Counselor in a timely manner;

(5) It lacks specificity and detail;

(6) It was not submitted in writing or was not signed by the agent;

(7) It does not meet the following prerequisites;

(i) The class is so numerous that a consolidated complaint of the members of the class is impractical;

(ii) There are questions of fact common to the class;

(iii) The claims of the agent of the class are typical of the claims of the class;

(iv) The agent of the class, or his/her representative will fairly and adequately protect the interests of the class;

(c) If an allegation is not included in the Counselor's report, the Complaints Examiner shall afford the agency 15 calendar days to explain whether the matter was discussed and if not, why he/she did not discuss the allegation with the Counselor. If the explanation is not satisfactory, the Complaints Examiner may recommend that the agency reject the allegation. If the explanation is satisfactory, the Complaints Examiner may refer the allegation to the agency for further counseling of the agent.

(d) If an allegation lacks specificity and detail, the Complaints Examiner shall afford the agent 15 calendars days to provide specific and detailed information. The Complaints Examiner may recommend that the agency reject the complaint if the agent fails to provide such

information within the specified time period. If the information provided contains new allegations outside the scope of the complaint, the Complaints Examiner must advise the agent how to proceed on an individual or class basis concerning these allegations.

(e) The Complaints Examiner may recommend that the agency extend the time limits for filing a complaint and for consulting with a Counselor when the agent, or his/her representative, shows that he/she was not notified of the prescribed time limits and was not otherwise aware of them or that he/she was prevented by circumstances beyond his/her control from acting within the time limit.

(f) When appropriate the Complaints Examiner may recommend that a class be divided into subclasses and that each subclass be treated as a class, and the provisions of this section then shall be construed and applied accordingly.

(g) The Complaints Examiner may recommend that the agency cancel a complaint after it has been accepted because of failure of the agent to prosecute the complaint. This action may be taken only after the Complaints Examiner has provided the agent a written request, including notice of proposed cancellation, that he/she provide certain information or otherwise proceed with the complaint, and the agent has failed to satisfy this request within 15 calendar days of his/her receipt of the request.

(h) An agent must be informed by the Complaints Examiner in a request under paragraphs (c) or (d) of this section that his/her complaint may be rejected if the information is not provided.

(i) The Complaints Examiner's recommendation to the agency on whether to accept, reject, or cancel a complaint shall be transmitted in writing to the agency, the agent, and the agent's representative. The Complaints Examiner's recommendation to accept, reject, or cancel shall become the agency decision unless the agency rejects or modifies the decision within 10 calendar days of its receipt. The agency shall notify the agent, the agent's representative, and the Complaints Examiner of

its decision to accept, reject, or cancel a complaint. Notice of a decision to reject or cancel shall inform the agent of his/her right to proceed with his/her individual complaint of discrimination, and to appeal the final agency decision on the matter to the Appeals Review Board (ARB) and of his/her right to file a civil action.

Sec. 713.605 Notification and opting out. (a) After acceptance of a class complaint, the agency, within 15 calendar days, shall use reasonable means, such as delivery, mailing, distribution, or posting, to notify all class members of the existence of the class complaint.

(b) A notice shall contain: (1) the name of the agency or organizational segment thereof, its location, and the date of acceptance of the complaint; (2) a description of the issues accepted as part of the class complaint; (3) an explanation that class members may remove themselves from the class by notifying the agency within 30 calendar days after issuance of the notice; and (4) an explanation of the binding nature of the final decision on or resolution of the complaint.

Sec. 713.606 Avoidance of delay. The complaint shall be processed promptly after it has been accepted. To this end, the parties shall proceed with the complaint without undue delay so that the complaint is processed within 180 calendar days after it was filed.

Sec. 713.607 Freedom from restraint, interference, coercion, and reprisal. (a) Agents, claimants, their representatives, witnesses, Directors of Equal Employment Opportunity, Equal Employment Opportunity Officers, Equal Employment Opportunity Investigators, Equal Employment Opportunity Counselors, and other agency officials having responsibility for the processing of discrimination complaints shall be free from restraint, interference, coercion, and reprisal at all stages in the presentation and processing of a complaint, including the counseling stage under § 713.602, or any time thereafter.

(b) A person identified in paragraph (a) of this section, if a Federal employee or applicant, may file a complaint of restraint, interference, coercion, or reprisal in connection with the

presentation and processing of a complaint of discrimination. The complaint shall be filed and processed in accordance with provisions of Subpart B.

Sec. 713.608 Obtaining evidence concerning the complaint. (a) *General.* (1) Upon the acceptance of a complaint, the agency head or his/her designee shall designate an agency representative. The agency representative shall not be an alleged discriminating official or any individual designated under § 713.204(c) of this part.

(2) In representing the agency, the agency representative shall consult with officials, if any, named or identified as responsible for the alleged discrimination, and other officials of the agency as necessary. In such consultation, the agency representative will be subject to the provisions of Civil Service regulations, rules, and instructions concerning privacy and access to individual personnel records and reports.

(b) *Development of evidence.* (1) The Complaints Examiner shall notify the agent, or his/her representative and the agency representative that a period of not more than 60 calendar days will be allowed both parties to prepare their cases. This time period may be extended by the Complaints Examiner upon the request of either party. Both parties are entitled to reasonable development of evidence on matters relevant to the issues raised in the complaint. Evidence may be developed through interrogatories, depositions, and requests for production of documents. It shall be grounds for objection to producing evidence that the information sought by either party is irrelevant, overburdensome, repetitious, or privileged.

(2) In the event that mutual cooperation fails, either party may request the Complaints Examiner to rule on a request to develop evidence. When the Complaints Examiner renders his/her report of findings and recommendations on the merits of the complaint, a party's failure to comply with the Complaints Examiner's ruling on an evidentiary request may be taken into account.

(3) During the time period for development of evidence, the Complaints Examiner may, in

his/her discretion, direct that an investigation of facts relevant to the complaint, or any portion thereof, be conducted by an Investigator trained and/or certified by the Commission.

(4) Both parties shall furnish the Complaints Examiner all materials which they wish him/her to examine and such other material as he/she may request.

Sec. 713.609 Opportunities for resolution of the complaint. (a) The Complaints Examiner shall furnish the agent or his/her representative and the representative of the agency a copy of all materials obtained concerning the complaint and provide opportunity for the agent to discuss materials with the agency representative and attempt resolution of the complaint.

(b) At any time after acceptance of a complaint, the complaint may be resolved by agreement of the agency and the agent to terms offered by either party.

(c) If resolution of the complaint is arrived at, the terms of the resolution shall be reduced to writing, and signed by the agent and the agency head or his/her designee. A resolution may include a finding on the issue of discrimination, and must include any corrective action agreed upon. Corrective action in the resolution must be consistent with law, Executive order, and Civil Service regulations, rules, and instructions. A copy of the resolution shall be provided the agent.

(d) Notice of the resolution shall be given to all class members in the same manner as notification of the acceptance of the class complaint and shall state the terms of corrective action, if any, to be granted by the agency. A resolution shall bind all members of the class.

(e) If the agency does not carry out, or rescinds, any action specified by the terms of the resolution for any reason not attributable to acts or conduct of the agent, his/her representative, or class members, the agency upon the agent's written request shall reinstate the complaint for further processing from the point processing ceased under the terms of the resolution. Failure of the agency to re-

instate the complaint is grounds for appeal by the agent to the Appeals Review Board.

Sec. 713.610 Hearing. On the expiration of the period allowed for preparation of the case, the Complaints Examiner shall set a date for a hearing. The hearing shall be conducted in accordance with § 772.307(c).

Sec. 713.611 Report of findings and recommendations. (a) The Complaints Examiner shall transmit to the agency head or his/her designee: (1) The record of the hearing; (2) His/her findings and analysis with regard to the complaint; and (3) His/her report of findings and recommended decision on the complaint, including corrective action pertaining to systemic relief for the class and any individual corrective action, where appropriate, with regard to the personnel action or matter which gave rise to the complaint.

(b) The Complaints Examiner shall notify the agent of the date on which the report of findings and recommendations was forwarded to the agency head or his/her designee.

Sec. 713.612 Agency decision. (a) Within 30 calendar days of receipt of the report of findings and recommendations issued under § 713.611, the agency head or his/her designee shall issue a decision to accept, reject, or modify the findings and recommendations of the Complaints Examiner.

(b) The decision of the agency shall be in writing and shall be transmitted to the agent or his/her representative, along with a copy of the record of the hearing and a copy of the findings and recommendations of the Complaints Examiner.

(c) When the agency's decision is to reject or modify the findings and recommendations of the Complaints Examiner the decision shall contain the specific reasons in detail for the agency's action.

(d) If the agency has not issued a decision within 30 calendar days of its receipt of the Complaints Examiner's report of findings and recommendations, the findings and recommendations shall become the final agency decision. The agency shall transmit the final agency decision and the record of the hearing to the

agent or his/her representative within 5 calendar days of the expiration of the 30-day period.

(e) The agency shall inform the agent or his/her representative of the right to appeal the final agency decision to the Commission's Appeals Review Board and of his/her right to file a civil action in accordance with § 713.641 of the regulations, and of the time limits applicable thereto.

(f) A final agency decision on a class complaint shall be binding on all members of the class and the agency.

Sec. 713.613 Notification of class members of decision. Class members shall be notified by the agency, through the same media employed to give notice of the existence of the class complaint, of the agency decision and corrective action, if any. The notice, where appropriate, shall include information concerning the rights of class members to seek individual relief, and of the procedures to be followed. Notice shall be given by the agency within 10 calendar days of the transmittal of its decision to the agent.

Sec. 713.614 Corrective action. (a) When discrimination is found, an agency must eliminate or modify the personnel policy or practice out of which the complaint arose, and provide individual corrective action to the agent in accordance with § 713.271 of this part. Corrective action in all cases must be consistent with law, Executive order, and Civil Service regulations, rules and instructions.

(b) When discrimination is found and a class member believes that but for that discrimination he/she would have received employment or an employment benefit, the class member may file a written claim with the head of the agency or the Director of Equal Employment Opportunity of the agency within 30 calendar days of notification by the agency of the decision of the agency.

(c) The claim must include a specific, detailed showing that the claimant is a class member who was affected by a personnel action or matter resulting from the discriminatory policy or practice within not more than 135 calendar days preceding the filing of the class complaint.

(d) The agency shall attempt to resolve the claim for relief within 60 calendar days after the date the claim was postmarked, or, in the absence of a postmark, within 60 calendar days after the date it was received by an official with whom claims may be filed. If the agency and claimant do not agree that the claimant is a member of the class or upon the relief to which the claimant is entitled, the agency shall refer the claim, with recommendations concerning it, to the Complaints Examiner.

(e) The Complaints Examiner shall notify the claimant of the right to a hearing on the claim and shall allow the parties to the claim an opportunity to submit evidence and representations concerning the claim. If a hearing is requested, it shall be conducted in accordance with § 772.307(c) of this chapter. If no hearing is requested, the Complaints Examiner, in his/her discretion, may hold a hearing to obtain necessary evidence concerning the claim.

(f) The Complaints Examiner shall issue a report of findings and recommendations on the claim which shall be treated the same as a report of findings and recommendations under §§ 713.611 and 713.612.

(g) If the Complaints Examiner determines that the claimant is not a member of the class or that the claim was not timely filed he/she shall recommend rejection of the claim and give notice of his/her action to the agency, the claimant, and his/her representative. Such notice shall include advice as to the complainant's right to appeal to the ARB or to file a civil action in accordance with the provisions of this part.

Appeal to the Commission

Sec. 713.631 Appeal to the Appeals Review Board. (a) An agent may appeal to the ARB the decision of the head of the agency or his/her designee: (1) To reject or cancel his/her complaint, or a portion thereof; for reasons covered by § 713.604; (2) to refuse to reinstate the complaint for further processing in accordance with the provisions of § 713.609(e); and (3) on the merits of the complaint and/or corrective action.

(b) A claimant may appeal to the ARB from a decision of the head of the agency or his/her designee: (1) To cancel or reject a claim for individual relief in accordance with § 713.614 (f) and (g); and (2) on the merits of his/her claim for individual relief.

(c) An appeal may be filed at any time after receipt of the agency's final decision, but not later than 15 calendar days after receipt of that decision except when the appellant shows that he/she or his/her representative was not notified of the prescribed time limit and was not otherwise aware of it, or that he/she or his/her representative was prevented by circumstances beyond his/her control from appealing within the prescribed time limit.

(d) An appeal shall be deemed filed on the date it is postmarked, or, in the absence of a postmark, on the date it is received by the ARB. The Board's review will be made upon the existing record to determine if the agency decision is in accord with applicable law, Executive Order, or Civil Service regulations, rules, and instructions and is supported by substantial evidence.

Sec. 713.632 Reopening and reconsideration by the Commissioners. The Commissioners may reopen and reconsider any previous decision of a Commission office on their own motion or at the request of either party in accordance with provisions of § 772.312(a)(1) of this chapter.

Civil Actions

Sec. 713.641 Statutory right. (a) An agent who has filed a complaint or a claimant who has filed a claim for relief based on race, color, religion, sex, and/or national origin discrimination is authorized to file a civil action in an appropriate U.S. district court:

(1) Within 30 calendar days of his/her receipt of notice of final action taken by his/her agency on a complaint or claim;

(2) After 180 calendar days from the date he/she filed a complaint or claim with his/her agency if there has been no decision on the complaint or claim;

(3) Within 30 calendar days of his/her receipt of the decision of the ARB on his/her appeal; or

(4) After 180 calendar days from the date he/she filed an appeal with the ARB, if there has been no ARB decision.

(b) An agent who has filed a complaint or a claimant who has filed for relief based on age discrimination, is authorized to file a civil action in an appropriate U.S. district court.

Sec. 713.642 Notice of right. When the agent alleges that the agency discriminated against a class on the basis of race, color, religion, sex, national origin, and/or age, or a claimant files

for relief, the agency or the Commission shall notify him/her of his/her right to file a civil action in any final action on a complaint, or claim, under §§ 713.604, 713.612, 713.614, or 713.631.

Sec. 713.643 Effect on administrative processing. The filing of a civil action by an agent or claimant does not terminate agency processing of a complaint or claim or ARB processing of an appeal under this subpart.

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The First Line

A Newsletter for Federal Supervisors and Midmanagers

Volume 2, Number 2

December 1977-January 1978

President Urges Part-Time Opportunities

On September 16, President Carter urged Federal agencies to find creative ways to open up opportunities for men and women who want part-time employment. The President asked that agencies focus on providing permanent part-time jobs to attract career employees.

Below is a brief summary of current Federal policies which you or your employees should consider when you're thinking about part-time employment.

Q. What's a part-time employee?

A. The Federal Personnel Manual defines a part-time employee as an individual working under a pre-arranged schedule of less than 40 hours a week.

The information which follows applies *only* to permanent part-time employees—those holding career or career-conditional appointments.

Q. How are hours and work schedules arranged?

A. Employee work schedules are set by agency management according to the organization's needs. To be considered a part-time employee, one needn't work the same number of hours each day, or the same number of days each week. While a part-timer must have a regular schedule, the Comptroller General has ruled that, at least for determining leave eligibility, only part of the work hours need be prescheduled. As little as one hour of any day satisfies this requirement.

Q. How is pay determined?

A. Compute a part-timer's gross pay by multiplying the employee's hourly rate by the number of hours worked during the pay period. Pay adjustments and withholding amounts are generally

prorated according to the amount of gross pay.

Q. What about overtime pay?

A. Part-time employees are generally entitled to receive overtime pay for work over 8 hours a day, or over 40 hours a week.

Q. How is leave earned?

A. Leave is prorated according to the number of hours worked. See Book 630 of Federal Personnel Manual Supplement 990-2 for details (available in most personnel offices).

Q. How is part-time service credited?

A. Usually, part-time career, or career-conditional, employees receive the same service credit as full-time employees, regardless of the number of hours worked. This service credit would be used to compute retirement, date of career tenure, completion of probationary period, within-grade pay increases, change in leave category, and time-in-grade restrictions on advancement.

One exception to this is that part-time work is prorated according to the percentage of a full-time schedule for purposes of meeting experience requirements. For example, a part-time GS-9 working 20 hours a week works for a year and then applies for a GS-11 job requiring at least one year of work experience at the GS-9 level. Because the GS-9 worker only worked half-time, he or she could only count one-half year toward the experience requirement.

Q. What fringe benefits are part-timers eligible for?

A. Permanent part-time employees are generally eligible for the same fringe benefits as full-timers:

☐ Retirement. Retirement annu-

ities are computed on the basis of an employee's *length of service* and *highest average annual pay received for any three consecutive years*. Retirement benefits are computed in the same way for both *full-time* and *permanent part-time* employees. Service time counts in full—it is not prorated.

☐ Health benefits. Permanent part-timers may participate in the Federal Employee's Health Benefits Program. They pay the same premiums as full-timers, get the same coverage, and benefit from the same Government contribution toward the cost of the insurance. See **Part-Time**, p. 4.

A Not So Rare Pair of Troubled Employees

by Donald A. Phillips

Don Phillips manages the Alcoholism and Drug Abuse Program for Federal employees.

When's the last time one of your employees made you angry . . . or frustrated . . . or worried? Probably not long ago.

We frequently respond emotionally to employee behavior. It's part of being human and working together. When people depend on one another to get work done there will be friction. All your employees will occasionally do something wrong, or won't get something done on time, or will somehow "drop the ball." And when that happens you feel "something"—and often very strongly.

You probably handle employees with only occasional lapses very well. Both of you usually learn something useful—about the job or each other. The occasional lapse is not the problem.

The First Problem

The employee who *frequently* has a problem, whose behavior or performance usually fails to meet our

See **Troubled**, p. 3.

Supervisors Workshop

on Communication

Here's How to Listen Better

... and Why It's Worth Working At

Like most supervisors, you probably spend most of your day communicating in some way. A lot of this time you spend *listening*.

Since you spend so much time doing it, listening *effectively* can be one of your most valuable skills. There are a lot of reasons why listening can be important to you.

It can improve relations with your employees. People need to be heard, and need to feel free to talk with their supervisors and be met with sympathetic understanding. Just hearing an employee out, without interrupting, and then following with appropriate action not only relieves employees' perception of the problem, but also can resolve the problem itself.

It can encourage your employees' natural creativity. Encouraging employees to share their ideas with you can foster new, constructive approaches to problems.

It keeps information accurate. In complex organizations, messages have to weave their way through the organization before they get where they're going. If individuals along the way fail to listen effectively, the result is distorted information when it is passed further.

It saves time, money, and space. The "put it in writing" rule often grows out of bad experiences with oral communication because someone wasn't listening effectively. The result is paperwork and extra cost. Brief information can be passed on by word of mouth—if people listen effectively—and it saves time, money, and space.

It can be worth more than thousands of written words. Speech habits and gestures during a conversation can tell you more about a person than dozens of letters inquiring into the person's background.

Even though listening is so valuable, Dr. Wesley Wicksell of Louisiana State University estimates that the majority of supervisors are, at *best*, only 20 percent effective in listening to their employees.

Two kinds of barriers to listening cause people to be ineffective listeners:

Physical barriers are usually temporary. Temperature, light, noise, and fatigue are examples. They are less important to good listening than the next kind of barrier, *mental*.

Mental barriers are the roadblocks inside the listener's mind which keep the message from getting through. Here are the roadblocks—really nothing more than bad listening habits—and how you can help remove them (adapted from *The Art of Listening* by Jud Morris):

☐ *Evaluation.* You hear a few words and begin at once to decide whether the speaker is correct or incorrect. You are so involved mentally agreeing or disagreeing with the speaker's statement, that you're not hearing. To avoid this problem, don't judge or evaluate until you have *understood* all of what the speaker was trying to communicate to you.

☐ *Filling in your own details,* mentally adding to what the speaker has actually said, and then jumping to a conclusion won't help you understand what the speaker was trying to say. To avoid this, don't put words into the speaker's mouth that aren't there.

☐ *"Everyone knows that" assumptions* can block your understanding. You can fall into this trap by assuming that the speaker agrees with you on specific points. You then interpret what the speaker is saying based on that assumption. Solution—don't as-

Adapted from an article by William B. Coggins, "Listening as a Management Tool," in Navy Department's Advisor (Spring 1976).

sume the speaker shares your viewpoints, and don't use your own viewpoints as the framework for the speaker's statements.

☐ *The closed mind.* One of the most common barriers, it's also the most serious. If you feel you know all the answers and refuse to listen to anything contrary to those beliefs, you probably won't really hear what the speaker is trying to say. Answer—keep an open mind. Other people probably have something worthwhile to say, even though you may not agree.

☐ *Lack of attention.* At 100 to 200 words a minute, speaking is a lot slower than thinking. This means that our minds have a lot of spare time to spend in other-than-listening thoughts. To make productive use of this extra time, concentrate on the speaker and listen with all your senses to determine his or her real meaning, tones, emphasis, gestures, and expressions. This requires a lot of effort—it's much easier to let your mind wander—but it pays off in greater understanding.

☐ *Wishful hearing.* People are inclined to hear what they want to hear. And we don't hear what we don't want to hear. This is a hard habit to break, because it means that you may have to be deliberately uncomfortable. But the reward is maturity, professionalism, and real understanding.

☐ *Semantics.* Words can mean different things to different people. The meaning a particular word has for you may not be the same meaning that the speaker wants it to have. Consider all possible meanings and choose the one that seems most appropriate.

☐ *Excessive talking.* Some people fear silence, want to remain in control of the conversation, want to avoid unpleasant subjects, or want to be the center of attention. Some just like to hear their own voice. When not actually talking, *excessive talkers* are thinking about what they are going to say next. Break the habit by consciously cutting down on the amount of talking and giving full attention to what the other person has to say.

☐ *Lack of humility.* Ever since school days, when we sat listening to a teacher, we have accepted the belief that a speaker is automatically

more important than to use it to compensate for this by acting more important than any speaker. In the first place, that belief is false. Speaker and listener are equal partners in communication. You can help remove this particular roadblock by realizing that others might have something worthwhile to share with you. Don't consider yourself too good to learn from someone else.

☐ Fear. We usually don't even admit it to ourselves, but one of the strongest roadblocks to understanding is our fear that what we hear will somehow change us. We don't want to be uncomfortable. Yet change, correction, improvement, needn't be negative. The first step in removing this roadblock is to recognize that it's there, then try hard to de-fuse it.

President: "Ease Impact of Change on Employees"

Shortly after taking office, President Carter assured Federal employees that his reorganization efforts would not cause any employee to lose a job, be demoted, or to lose pay status.

The President has now outlined principles he wants agencies to follow to achieve this, as well as to lessen the impact of other organization or program changes on employees.

The principles were set out in a December 14, 1977, joint memorandum to department and agency heads from Acting OMB Director James T. McIntyre, Jr., and CSC Chairman Alan K. Campbell, and include:

- good faith job offer—preferably at the same grade—to all employees whose positions are directly affected by a reorganization;
- amending the Administration's grade retention legislative proposal to make it retroactive to January 1, 1977, thereby covering any demotions that occur before enactment.

The President's assurances apply both to reorganizations spearheaded by the President's Reorganization Project and to internal reorganizations initiated by Administration officials.

For changes other than reorganizations (such as program or budgetary adjustments, or military realignments and base closings), the President wants agencies to use vigorous reassignment programs, reliance on attrition, retraining, and other measures to reduce the impact on affected employees.

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expectations, usually has a serious problem. Perhaps it's a marital or financial or a developing alcohol or drug problem or a serious emotional conflict.

Knowing that you have such an employee is easy. If the employee has the skills to do the job, perhaps performed well in the past, but now isn't doing well and your supervisory skills don't bring about a sustained improvement—chances are you've got an employee with a problem.

More than likely the decline has little to do with your skill as a supervisor. Fact is the employee needs special help and the best supervisory technique won't solve the employee's problem without that help.

And the Other Problem

You have another problem, and that is your feelings and responses to the employee . . . and that's very much your problem. If you don't believe it, think back to the employee who often made you feel:

angry
puzzled
guilty
frustrated
fearful
inadequate
lonely

Because of those feelings you probably:

used the silent treatment
argued
threatened
thought about a transfer (for you or the employee)
begged
withdrew
disciplined
counseled
gave up (at least four times)

Let's get a bit more specific and picture the process you probably went through.

1. You ignored the employee as long as you could. This is the "praying for a miracle" stage.

2. When you could no longer ignore the situation you had a few good "heart-to-heart" talks. This is the "reason will prevail" stage.

3. Then you randomly begged, caajoled, and threatened. This is the "pleading" stage.

And finally you disciplined, fired, forced to resign, transferred, or retired the employee. This is the "bleeding" stage (probably both you's and the employee's).

Where did you go wrong?

You're Number One

First of all, you started working on the wrong employee first. That's right—you're number one. Before you can effectively deal with your employee you must be sure of where you're coming from. Most of us can't do that by ourselves. You'll need help. Sometimes it's as simple as just talking it over with someone and sorting through the feelings and unproductive behavior.

When you fall into this pattern of behavior, you're not a lot different from your employee who is causing your feelings and behavior. The employee, too, is suppressing strong feelings and doing things that continue the conflict.

Both of you need the helpful experience of just talking to someone and sorting out your feelings. But before you'll be able to motivate your employee into a counseling experience you should seek it for yourself.

The agency programs designed to counsel or assist employees with alcohol, drug, or other emotional problems can help more than just the employee in question. They can help you. In fact, helping you is sometimes an essential first step before you can do your job of referring your employee for counseling. Here is some advice:

☐ Don't ignore a developing problem. Chances are it will only get worse.

☐ Forget about trying to figure out what's wrong with the employee. You don't need that information to start discussions with a counselor.

☐ Don't become the counselor yourself. You haven't been trained for this and it's also difficult to be objective about one of your own employees.

☐ Never threaten discipline unless you're willing and able to carry it out.

☐ And finally, pick up the phone and call your installation's counselor or counseling program coordinator at the early signs of trouble. Early action will frequently eliminate the need for discipline.

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☐ Life Insurance. Permanent part-timers are eligible for Federal Employees' Group Life Insurance and Optional Life Insurance programs. The actual amount of insurance for which an employee is eligible is based on annual salary, but in any case it is not less than \$10,000.

Q. What are part-timers' rights in the event of reductions-in-force or adverse actions?

A. In general, permanent part-time employees are entitled to the same overall appeal rights and protections in adverse actions and reductions-in-force as their full-time counterparts:

☐ Adverse actions. Part-timers can appeal serious disciplinary actions taken against them including removals, suspensions of more than 30 days, furloughs without pay, and reductions in rank or pay. Specifically included in the list of appealable actions is any involuntary reduction in the scheduled number of hours of duty per week for a part-time employee.

☐ Reduction in force. In a reduction-in-force, part-timers can only compete for other part-time jobs and are not entitled to full-time jobs if there is no part-time job that they can continue working in.

The information in this article applies *only* to permanent part-time employees—those holding career or career-conditional appointments. Specific part-time employment opportunities may vary from agency to agency. Career development opportunities for part-time workers may be limited in some agencies or installations, as well. Contact your personnel office if you need more detailed information about part-time employment *in your agency*. Agency personnel officers and others who want general policy information may write or call the Office of Staffing Policies, Room 6526, Bureau of Recruiting and Examining, U.S. Civil Service Commission, Washington, D.C. 20415. Phone 632-6817 (local or FTS) or (202) 632-6817 (commercial).

answer line

Labor Relations

Q. One of my employees has been ignoring our rules for recording overtime. If I call her in to counsel her about the problem, must I also invite the union representative to the counseling session? What if I am going to discuss disciplinary action I plan to take—must I also allow the union representative to represent this employee?

A reader in Phoenix, AZ.

A. Anthony F. Ingrassia, Director of the Civil Service Commission's Office of Labor-Management Relations, replies:

Your best source of advice on labor relations issues is the labor relations staff in your own organization. They are familiar with the specific contract that applies, as well as how your own organization's regulations apply. However, there are several *general* points to keep in mind.

☐ If no union has the exclusive right to represent your employees, you aren't required to invite a union representative to any meeting you hold with an employee.

☐ If you are counseling an employee, or even if you are informing him or her of your decision to take disciplinary action, you are not required to invite a union representative to the meeting unless your union contract requires it.

☐ If you interview one or more employees to investigate the facts surrounding an incident which may later result in disciplinary action, you are not required to invite a union representative to the interview, again, unless your union contract says otherwise.

☐ Once a grievance has been filed, however, whether under the negotiated or agency grievance procedures, a meeting with an employee to discuss the grievance does bring union rights into play. At such a meeting, the exclusive union does have the right to be represented.

☐ Also, if you hold a meeting with one or more of your employees dur-

ing with employees on personnel policies and practices or other matters affecting general working conditions in the unit, the union which is the exclusive representative of the affected employees must be invited to attend. This right allows union representatives to be present at the meeting and to speak. While it doesn't mean that they can take over and run the meeting, it does entitle them to more than just an "observer" role.

These comments deal with the union's *right* to be represented. You should consider that there may be times when the presence of a union representative could help you solve the problem, even though the union may have no *right* to be present.

Labor-management relations policies and union contracts should not interfere with the rights you have (under Executive Order 11491) to give assignments to your employees; to hire, promote, transfer, assign, and retain employees in positions within the agency; and to suspend, demote, discharge, or take other disciplinary action against employees.

Labor relations policies aren't meant to keep you from doing your job of managing and supervising. They are meant to give your employees more of a chance to take part in making and carrying out personnel policies and practices that affect them. ☐

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